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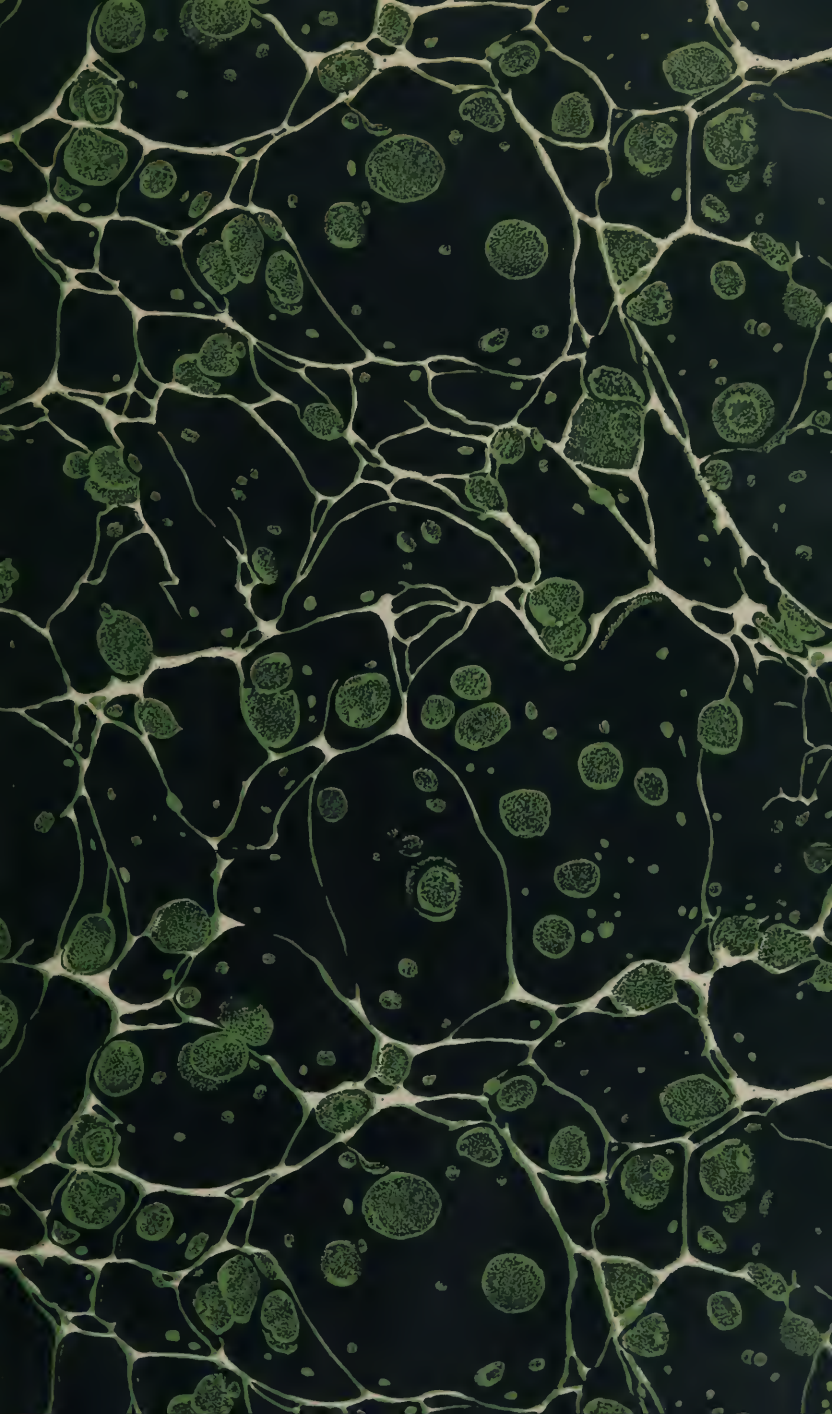
ANNEX

Section

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Wm. R. Storer
for W. H. Bogart

FACTS AND DOCUMENTS

BEARING UPON

THE LEGAL AND MORAL QUESTIONS

CONNECTED WITH

THE RECENT DESTRUCTION

OF THE

QUARANTINE BUILDINGS,

ON

STATEN ISLAND.

BY THE EXECUTIVE COMMITTEE OF STATEN ISLAND.

NEW YORK:

WM. C. BRYANT & CO., PRINTERS, 41 NASSAU ST., COR. LIBERTY.

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Staten Island. Citizens

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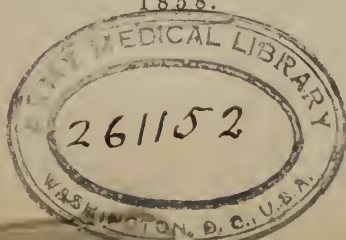
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TO THE PUBLIC.

In view of the general interest which the recent disturbances connected with the Quarantine establishment on Staten Island have awakened, and of the numerous distorted and conflicting reports which have found their way into the public papers, it has been deemed advisable that a few authentic documents and facts bearing upon the moral and legal aspects of the question should be collected and laid before the public. In many instances it has been found that those who were the loudest in their condemnation of the citizens of Richmond County, at the outset of these disturbances, have greatly modified, if not wholly changed, their opinions when they became acquainted with the true facts of the case. Certain it is that the annals of this country furnish no instance of a whole community having so long and patiently borne such oppressive grievances at the hands of its government, as the people of Staten Island have been subjected to in connection with this Quarantine nuisance. If no other benefit is likely to flow from these disturbances, at least it is to be hoped they will lead to a judicial determination of the extent to which Government may go in its encroachments upon the natural right of the citizen to the enjoyment of life, health and property, if they do not arouse the Legislature to the performance of a tardy act of justice to

an oppressed community. A candid perusal of the accompanying documents is respectfully solicited, with a view to a correct understanding of the whole matter.

Staten Island, Dec. 7, 1858.

By order of the Executive Committee of Staten Island,

N. BARRETT,
Chairman.

MEETING OF CITIZENS OF STATEN ISLAND.

AFTER the destruction of the Quarantine Hospitals on Staten Island, a public meeting of the inhabitants of the county was called for the 20th of September, "to interchange views in relation to the then recent events connected with the Quarantine, to lay before the public a correct and reliable statement of the facts of the case, and to take such steps as their duty in the emergency might require." The call was numerously signed by the most respectable citizens of the Island, and was responded to by the largest concourse of people ever assembled in the county.

Dr. JOHN T. HARRISON was called to preside, and NATHAN BARRETT, GEORGE W. JEWETT, JAMES GUYON, DANIEL B. ALLEN, Dr. E. W. HUBBARD, and GARRETT P. WRIGHT acted as Vice-Presidents.

The following Report was then presented to the meeting by a committee chosen for that purpose, and unanimously approved :

COMMITTEE'S REPORT.

The Committee appointed to prepare for this meeting a statement of facts connected with the burning of the Quarantine Hospitals in Richmond County, and to recommend the action proper to be taken thereupon, do respectfully report :

That, in the opinion of your Committee, the recent destruction of the Quarantine buildings on this Island, the studied

efforts of interested parties to pervert the facts and bias the public mind in relation to such destruction, and, above all, the strange proclamation of His Excellency the Governor of the State, indiscriminately censuring this entire county, and declaring it to be in a state of insurrection, require that a calm and reliable statement of facts should be presented by the citizens of this Island to their fellow-citizens of the State, by which their conduct may be understood and approved or condemned. It was deemed advisable that such statement should be withheld until the passions and prejudices, excited by the exaggerated reports in circulation, had subsided, and a dispassionate hearing could be obtained. That time, it is believed, has now arrived.

While your Committee do not feel themselves called upon to enter into an examination of the question, whether the destruction of the Quarantine buildings was legally justifiable, they believe that a simple narration of the history of the location of that institution on this Island, and of the various evils and abuses connected with it, as well as the repeated efforts made by this and the adjacent counties for its removal, and the means by which those efforts, and the action of the Legislature thereupon, have been baffled, will go far to remove the load of censure and reproach which has been visited upon this community. They, therefore, solicit a candid and dispassionate consideration for the following statement:

The first Quarantine establishment in this State was located at Bedloe's Island in 1758, by act of the Colonial Legislature. In 1796, it was removed to Governor's Island, (then Nutten Island,) where it remained until the yellow fever, which appeared in New York in 1799, called for its removal. In that year, the Legislature passed an act appointing Commissioners to select a new site on Staten Island, to have the damages appraised for the lands taken, and to erect hospitals thereon. The inhabitants of the Island strenuously opposed its location among them, refusing to sell their lands for that purpose, and Mr. MICHEAU, their representative at Albany, used every means in his power to defeat the bill. The Commissioners, notwithstanding, selected the thirty acres constituting the present site, and assessed the

damages and took a title in fee from the Church of St. Andrew, in the name of the People, by the right of eminent domain. At that time the population of the Island was very sparse, and its only communication with New York was by means of row or sail boats, occupying from two to five hours in the passage. The very first year after the erection of the hospitals, about twenty-five cases of yellow fever occurred outside the Quarantine grounds, all but one of which terminated fatally. From that day to the present, the feeling of insecurity has steadily increased with the increase of population. Almost every year more or less cases of yellow fever, or other contagious or infectious diseases, have spread beyond the hospital grounds; and in 1848 the number reached as high as one hundred and eighty, of which many terminated fatally.

This led to repeated applications by our inhabitants for legislative relief, in several of which the disinterested citizens of New York and Brooklyn joined. The Legislature of 1848, at length yielded to the justice of these applications, and appointed an able committee, with the Hon. WESSEL S. SMITH at its head, to give the subject of the fitness of the present Quarantine station for the protection of New York, Brooklyn and Staten Island, a thorough and impartial investigation, and to report at the next session. During the recess of the Legislature, that committee entered upon a most thorough examination of the whole question. They examined the Health Officer and numerous physicians, shipping merchants, sea captains, and other citizens of New York, Kings and Richmond, who were conversant with the subject, and nearly all of whom bore testimony to the entire unfitness of the present grounds for Quarantine purposes. The result was a unanimous and elaborate report, in 1849, to the effect that the Quarantine could no longer be continued on Staten Island with safety; that it afforded no protection to New York or Brooklyn; that it had long been a grievous and unjustifiable burden upon Richmond county; and the Committee, in conclusion, "unhesitatingly recommend its immediate removal."* Intermediate the appointment and report of this

* See Report and Testimony. *Note A, post p. 21.*

Committee the yellow fever broke out on Staten Island, and raged with unprecedented violence. Sporadic cases occurred in the neighboring cities. In consequence, the Legislature, notwithstanding the determined opposition of certain shipping interests in the city of New York, passed, on the 10th of April 1849, an "Act for the establishment of hospitals at Sandy Hook," and appointed officers and appropriated money to carry it into effect. Unfortunately, the measure continued to encounter the steady hostility of these interests after, as well as before, its enactment. The officers charged with the duty of removal never took definite action, and thus the expressed will of the Legislature was defeated. From that time to the present, the law has remained a dead letter on the statute book.

Disconraged by this fruitless result, no further steps of importance were taken by our citizens towards the removal of the Quarantine until the fearful visitation of yellow fever on Long Island, Governor's Island, and Staten Island, in the summer of 1856. The ravages of that frightful pestilence are too fresh in the recollection of all to require particular mention here. The rapid and unchecked spread of the disease, the remains of its victims lying in almost every house on the Narrows from Coney Island into the city of Brooklyn, and the impending danger to New York itself, aroused the people to a renewed application for legislative relief.* On the 6th day of March, 1857, an act was passed almost unanimously, "for the removal of the Quarantine station" from Staten Island, and commissioners were named and funds appropriated to carry out its provisions. A general feeling of relief and satisfaction pervaded

* In the very able and interesting report of Dr. Elisha Harris, physician-in-chief of the Marine Hospital, Feby. 4, 1857, it appears there were 558 cases of yellow fever in the vicinity of the Port of New York, in the summer and autumn of 1856. Of these persons, 189 resided on Long Island; 61 on Governor's Island; 46 in the city of New York; 93 on Staten Island, and 29 in Brooklyn. More than one-third died of black vomit. Fifty cases came to the Hospital from New York city. Among the victims on Long Island were Judge Rockwell, Gen. Stanton, U. S. A., Dr. J. H. Bailey, Chandler White, Esq., and other distinguished citizens. During the last summer (1858), 31 cases of yellow fever occurred in the heart of the city of Brooklyn. Nearly an entire block became infected, and it only required a favorable state of the atmosphere for the disease to become epidemic.

the counties which were to be especially benefitted by this act. The citizens of Richmond congratulated themselves that they had at length got rid of a deadly nuisance. But they were doomed to a speedy disappointment. No sooner had the commissioners for removal proceeded to the State of New Jersey for the purpose, and, as they alleged, with a fair prospect of securing Sandy Hook for a Quarantine station, than they were openly met by the remonstrances, and secretly by the influences, of the same parties who had once before been so successful in baffling the action of our Legislature and in fastening the pestilence upon us. They likewise encountered the remonstrances of the Health Officer, Board of Underwriters of New York, and the Commissioners of Emigration.* The result is known. It is a part of the history of the past. The Commissioners were foiled in their application, our opponents once more triumphed, and the Quarantine remained at our very doors, the same intolerable and hopeless nuisance, notwithstanding the twice-expressed will of the law-making power of the country.

In the meantime, the institution had, either by corrupt or reckless mismanagement, become a more alarming evil than ever before. Soon after it was placed under the management of the present Health Officer, a series of legislative enactments were procured, designed to centre in that person more power than had ever been delegated to any one individual in this State. The vast commerce of this port was subjected to his almost unlimited and irresponsible control. He was vested with authority to stop all vessels entering the harbor—to say how long they should remain at Quarantine—to require cargoes to be

* The Committee of the Legislature of New Jersey, appointed to confer with the New York Commissioners for Quarantine removal, in their report, say: "But 'this application for the occupancy of Sandy Hook as a Quarantine ground 'is pressed forward in direct opposition to the protestations of the Health Officer 'of the Quarantine itself, the New York Chamber of Commerce, the Board of 'Underwriters, the Commissioners of Emigration, and thousands of New York 'merchants, interested in marine affairs, all of whom have remonstrated in the 'most decided manner against the removal.'" (*See N. Y. Assembly Document No. 69, page 89 Session of 1858.*)

lightered in boats, and by persons selected by himself, and he assumed to fix a tariff of charges without limit or control. The consequences are well known. The Institution was managed quite as much with a view to the increase of the princely revenue of the Health Officer as to the preservation of the public health. Coasting vessels coming from south of Cape Henlopen, as well as all vessels from foreign ports, sometimes numbering between one and two hundred a day, were subjected to visitation at enormous expense. The exclusive privilege of lightering was given to a monopoly. Ship loads of passengers from foreign and domestic ports were unnecessarily quarantined for days, and compelled to pay large sums for board and the most trifling accommodations. In many instances, it is alleged, persons and vessels so quarantined were, for a pecuniary consideration, permitted to leave their anchorage, and proceed to the city of New York. The Quarantine grounds were frequently overcrowded, the sick and well were placed in dangerous proximity to each other, and promiscuous intercourse was permitted between those inside and outside the walls. Stevedores and other employees were suffered to mingle indiscriminately with our citizens, and to pass at pleasure on the ferries to and from their families in the cities of New York and Brooklyn. All this time there were published in the daily papers, and in the reports of the Health Officer to the Board of Health of New York, the most exaggerated statements of the rigid enforcement of the Quarantine regulations. It was repeatedly proclaimed that all stevedores were required to remain within the Quarantine grounds five days after visiting infected vessels; yet it was proved, and the Health Officer has admitted, that on the 7th day of August last, when the yellow fever was extensively raging, a large body of them were passed out of the grounds to mingle in and control crowded political meetings of the citizens of Castleton and other towns, and a few evenings later many others were suffered to be present at a political convention at Richmond. Shortly after this, two cases of yellow fever occurred at New Brighton, where one of these meetings had been held.

When the yellow fever was committing frightful havoc on Staten Island in the summer of 1856, the Board of Health of

Castleton, in order to protect the lives of their fellow-citizens, made regulations and erected structures to prevent intercourse between those inside and outside the Quarantine inclosure. The Health Officer, instead of aiding their laudable efforts, and notwithstanding a similar regulation of his own, permitted a band of men from the inside to break down the barriers by mob violence, thus setting an example which has been but too fearfully imitated. When the rioters were arrested for an infraction of the law, he procured counsel to sue out writs of *habeas corpus*, and take the offenders before a neighboring judge, by whom they were discharged. From that time to the present, the action of the Board of Health of Castleton, in the faithful and conscientious discharge of their duties, has been systematically resisted, and the members held up to ridicule in reports furnished the press from within the Quarantine grounds. Every effort of these authorities for the preservation of the health of the town was thwarted, and they found themselves unable to enforce their regulations or to restrain the officials and their employees within the Quarantine walls. Infected clothing, notwithstanding their remonstrances, was almost daily burned in an iron scow, whence the stench and vapours were wafted into the surrounding villages and on board the crowded ferry boats. The "Rattler," an infected vessel which had been suffered to proceed to New York, where several cases of yellow fever occurred on board, and which vessel the Mayor had threatened to scuttle and sink at her dock unless removed, was brought down to the Island and moored at a wharf in the midst of a densely-populated neighborhood, and close to the ferry landing. The Board traced numerous cases of yellow fever to the mismanagement of the Quarantine institution. Already had about twenty-six cases and ten deaths occurred, although it was yet early in the season. Day after day they saw their fellow-citizens sickening and dying around them, but they were powerless for relief or protection, notwithstanding the ample provisions of the law. At length these grievances became so intolerable that the Board of Health were compelled, after taking legal advice, to pass a resolution declaring the institution, under its gross mismanagement, an insufferable

nuisance, and calling upon "the citizens of the county to abate it without delay." This, it is believed by your committee, was the spark which, falling upon an already excited and outraged community, brought about the events of the nights of the 1st and 2d of September.

Such are some of the facts connected with the recent disturbances in this county, which we have felt it our duty to submit to the candid consideration of the public. We might multiply instances of the criminal misconduct of the Quarantine authorities—such as carelessness in disposing of the dead, discharging infected vessels near the densely-populated shores and ferry landings, and other acts, evincing an utter disregard of the health of the Island, all of which contributed to work up the minds of our citizens to a high pitch of excitement. While your Committee feel the great importance of preserving the peace, and profess the most profound respect for the laws of the country, they respectfully submit that, in the mind of every reflecting citizen, these circumstances must go far to palliate, if not to justify, the occurrences of the 1st and 2d of September. When it is remembered that the Quarantine buildings were located on our Island in spite of the remonstrances of its inhabitants; that the lands were taken by force of law; that contagious and infectious diseases have time and again swept off numbers of our citizens; that the gross mismanagement of the Quarantine of late years has not only brought that institution into disrepute, but has almost constantly endangered the lives of our families and friends; that it has twice been presented as a nuisance by the Grand Jury of the county; that two legislatures have authoritatively decided it should be removed; that the entire institution, perverted from its original object, no longer affords protection to our Island or to the neighboring cities—when all this, we say, is considered, we submit that the hasty and ill-tempered censure which has been visited upon our whole population is unjust and undeserved. We submit that none but those who have lived under the immediate influence of and experienced the enormous evils flowing from the Quarantine institution, and have been cognizant of the repeated peaceable efforts to remove it, are qualified to

pass an intelligent judgment upon the participators in the late disturbances.

We are aware that the advocates of the present Quarantine station have urged that those of our inhabitants who have moved to the Island since the erection of the hospitals, came here with their eyes open, and have no right to complain. Were the facts assumed true, the fallacy and injustice of such a monstrous proposition must be apparent on a moment's reflection. We have shown that the institution was forced upon us contrary to our wishes. Not to mention the natural increase of the population which resided here when the institution was brought down, thousands of innocent persons, many of them mechanics and laborers, have settled around it, unconscious of danger, at a time when the commerce of the port was so small as to excite no apprehensions, and when it was the universally received opinion of the medical profession that yellow fever was indigenous to the country, and could not be imported from abroad. Since then the commerce of the port has doubled every ten years, and the Spanish ports, whence yellow fever is imported, have been thrown open to our shipping. Thus the danger has been increased an hundred fold. But, were the proposition contended for correct, it would be a permanent barrier to all improvement, and forever devote this whole Island and the opposite shores of Long Island to the uses of a pest-house. The argument that nuisance once established should be perpetual, would have kept all the slaughter-houses, soap-boiling establishments, and other nuisances located in New York, including the Quarantine at Governor's Island, remaining there to this day. Fortunately this proposition is not less repugnant to law than it is abhorrent to reason and justice. The highest tribunals of this and all civilized States have held that nuisances must give way to the advance of population and the wants of trade.

It is not proposed here to discuss the question of the power of the Board of Health of Castleton to abate the hospital as a nuisance, as that may, ere long, come before the Courts for adjudication. We will simply state that the statutes under which they acted (Laws 1850, p. 690,) authorize them to pass "*such regulations as they shall think necessary and proper for the pre-*

servation of the public health," as well as to "*suppress and remove nuisances,"* and the act upon which the present Quarantine system is founded (Session Laws, 1798, page 405,) expressly provides that "*nothing in that act contained shall be construed to interfere with the remedies against nuisances prescribed by the common law.*" If the Board of Health of Castle-ton have not the power to preserve the lives and health of their fellow-citizens, then that town is the only town in the State deprived of the protection of sanitary laws, and delivered over to pestilence.

The attention of your Committee has been particularly directed to the grave charges of cruel and inhuman treatment practised towards the patients confined in the Quarantine hospitals at the time those buildings were destroyed. They felt that they owed it to themselves and the public to give these charges a thorough investigation, and if found true, to denounce the guilty parties. They have examined persons who were on the grounds as spectators during those eventful nights, as well as physicians of the highest respectability and standing, who tendered their services to the sick, and have watched the statements elicited from the witnesses in the investigation being conducted by the Attorney-General, and they are happy to say these all bear uniform testimony to the kind and considerate treatment extended to the inmates of the hospitals. They were carefully borne from the buildings on beds, and deposited out of the reach of danger, where they were sheltered alike from the heat of the flames and the inclemency of the weather. Suitable buildings were tendered by the citizens for their reception, but declined by the Quarantine authorities. Skilful physicians gave them unremitted attention, and the ladies of the village vied in their efforts to render their condition comfortable. Indeed, these medical gentlemen, as well as the Quarantine physicians, concur in saying that they were quite as well cared for, and convalesced more rapidly than when in the hospitals. Dr. Walser, the Deputy Marine Hospital physician, testifies that no act of inhumanity was perpetrated by the parties, but the sick were treated with the greatest kindness. It is untrue that any lives were lost, or that the patients were incommoded by the rain, or exposed to falling cinders. The individual who was killed on

the occasion was accidentally shot by one Brady, an employee of the institution.

The truth is the more gratifying in this case, because there seems to have been a studied effort to poison the public mind through the press, and the Governor has, perhaps inadvertently, given prominence to these misstatements in his recent proclamation. Indeed it is a matter of profound surprise and regret that His Excellency had not instituted an investigation into these charges before he assumed their truth, and upon that assumption censured this entire county. Had he done so, it is believed he would have found no occasion for pronouncing us in a state of insurrection, or for quartering the military upon us. We venture to say that in no county in the State have the laws been more promptly or uniformly enforced than in Richmond; and the readiness with which the civil authorities have aided the Attorney-General in the official investigation now pending, must satisfy every dispassionate mind that the emergency contemplated by the statute for calling out the military had not arisen.*

So, too, we believe that by a careful investigation of the facts certain city officials,† who have acted with more haste than wisdom, would have been spared the false position they have assumed in deciding to erect permanent buildings at the Quarantine, as a retribution upon our entire population, as well as upon the cities of New York and Brooklyn. Independent of the folly of making one wrong justify another, and of punishing whole communities for the hasty and indiscreet acts of a few individuals, these gentlemen should bear in mind that if they attempt to continue the Quarantine where it is, they are virtually setting at defiance, not only the wishes of all the disinterested citizens of New York and Brooklyn, but two acts of the Legislature for its removal, passed after the fullest deliberation and for the most cogent reasons. Those acts were solicited and enacted as much for the protection of New York and Kings Counties as for Staten Island. They should remember that nearly all the increase of population in this county, since the establishment of the Quarantine, has come from New York;

* Sec 2 Rev. Statutes, 685, sec. 102-3. (4th Edition.)

† The Mayor and Board of Health of New York.

that in fact, though not in name, we are a part of the suburbs of New York—the greater portion of our population doing business there, and going up daily. Nay, more, they should reflect that the annual injury to the trade and commerce of New York from yellow fever panics is immense, and increasing every year. Thousands of merchants and business men, not to mention travellers and those who would otherwise locate in that city, are kept away or driven to other cities in consequence of the proximity of the Quarantine and its attendant evils.

But suppose these gentlemen succeed in fastening this institution (twice authoritatively pronounced a nuisance) upon the inhabitants of this Island and of the neighboring counties for ten, twenty or thirty years to come. When, year after year, they see the pestilence sweeping its hundreds of victims to the grave, when they see the terror-stricken inhabitants flying from their dwellings, and whole districts depopulated, will the contemplation of this scene, and the consciousness that they were instrumental in bringing it about, contribute to their happiness? No! Such achievements may be a source of satisfaction to a few mercenary individuals who value their money more than the lives of their fellow-citizens, but are unworthy the consideration for a moment of such men as fill the public offices in our neighboring city. When the excitement of the hour shall have passed away, they will be heartily ashamed of their conduct and reasoning. Far better that they should, as good citizens, cheerfully co-operate with us in carrying out the law for the Quarantine removal.

If these gentlemen will calmly examine the following statistics showing the relative amount of population around the Harbor of New York in 1800, when the Quarantine was located on Staten Island, and at the present time, they will see that this institution cannot much longer remain where it is:

	In 1800.	In 1855.
New York County had.....	60,489	629,810
Kings County had.....	5,740	216,315
Richmond County had..	4,563	21,389
Total.....	70,792	867,554

The population of the adjacent shores of New Jersey is about 220,000.

If thirty acres of land were required to isolate the hospitals in 1800, when there were only seventy-one thousand inhabitants in and around New York, when the commerce of the port was very small, and when there was comparatively little intercourse with the city, can it be said the same area will protect nearly one million of inhabitants at the present time, when the crowded ferries are daily carrying thousands from under the walls of Quarantine to the neighboring counties, and the shipping has increased more than sixty fold? The Quarantine at Governor's Island was a better protection to the city in 1800 than it is at Staten Island in 1858. According to the laws of increase, the population in and around New York in 1870 will amount to 2,000,000, and the commerce of the port be more than doubled.

Were there any question as to the expediency of re-erecting permanent hospitals on the present site, that is forever put at rest by the Commissioners of Emigration in their report to the Legislature on the 10th of February, 1858. In assigning reasons for not having erected additional buildings to meet the wants of the institution, they say: "In this the Commissioners
 "were governed by their conviction that the public good, as
 "well as the public sentiment, now required a change of the
 "Quarantine location, and that their occupation of the present
 "site of the Marine Hospital could not be of long continuance.
 "The great and rapid increase of population along the shores
 "of the harbor and throughout the whole of Staten Island,
 "with the constant and easy communication with the cities,
 "render the Quarantine laws less and less efficacious, and their
 "strict observance more difficult, whilst the danger of diffusing
 "contagion or pestilence grows daily more threatening. The
 "Commissioners do not believe that any point on Staten Island
 "would meet the requirements and convenience of a proper
 "permanent marine hospital for Quarantine purposes." Gov. King, in his special message March 10, 1858, says, "The health
 "and safety of the cities of New York and Brooklyn demand
 "the removal of Quarantine from its present location."

In conclusion, your Committee beg to state that they do not intend, by anything herein set forth, to be deemed to pass upon

the question whether the recent burning of the Quarantine hospitals was justified in law, but they leave that to the judicial tribunals now engaged in its investigation.* If they have succeeded in bringing to the attention of those who have condemned our citizens unheard, and upon a one-sided statement of the case, the mitigating or justifying facts on the other side, they have accomplished all they proposed. They feel that this community has been unjustly censured. They believe that, had those who are the loudest in their denunciations lived, as our people have lived, for fifty-eight years under the pestilential influence of this Quarantine establishment; had they, year after year, labored as we have labored to secure its peaceful and legal removal; had they seen Legislature after Legislature pass enactments for its removal, only to be thwarted by the action of interested individuals; above all, had they seen, as we have seen, one after another of their relatives, neighbors and friends swept away by the pestilence, and found the laws insufficient to afford them protection or redress—then we say, we believe they would feel as profoundly as we have felt upon this subject. Human nature is the same, whether in New York or on Staten Island, and life and health are quite as dear to their possessors in the one place as in the other. All history shows that when governments have become powerless, through weakness or corruption, to protect the lives and property of their citizens, those citizens, when the grievances are no longer tolerable, will seek to redress themselves. Such efforts may assume the form of a vigilance committee, a mob, or a resolute union of citizens to abate nuisances; but they invariably indicate deep-seated grievances calling for redress. Such grievances we feel the people of this Island have long and patiently borne, and we believe that similar grievances would have produced similar, but more speedy, results in any other community.

Finally, your Committee unhesitatingly recommend that the citizens of Richmond County steadily insist upon the enforcement of the law of 1857, passed for the Quarantine removal,

* See Opinion of Judge Metcalfe, page 47.

and present a firm, united and determined resistance to the permanent re-establishment of the burnt hospitals.

Dated September 20, 1858.

LOT C. CLARK, WILLIAM EMERSON, GEO. WOTHERSPOON, NATHAN BARRETT, FRANCIS G. SHAW, DANIEL LOW, N. DANE ELLINGWOOD,	}	<i>Committee.</i>
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After the reading of this Report, the following resolutions were presented by Judge EMERSON, and unanimously adopted :

Resolved, That the people of Richmond County do not yield to their fellow-citizens in any other part of the State in their respect for just and equal laws, and for the most peaceful mode of asserting their rights. The charges of inhumanity have been too thoroughly disproved to need any notice from us.

Resolved, That we deeply regret that any outbreak should have occurred in our county tending to disturb the public peace, and to create alarm among the friends of order by substituting the hasty action of individuals for the more quiet and regular movements of official bodies.

Resolved, That the original establishment of the Quarantine upon Staten Island in spite of the earnest remonstrances of the inhabitants, and its continued existence among us to the present day, have powerfully operated to weaken the tenure of life, as well as to diminish the value of property, and that such an establishment in so populous a neighborhood must always be, as it has hitherto been, an intolerable nuisance.

Resolved, That, omitting all consideration of its legality, the proclamation of His Excellency the Governor, declaring Richmond County in a state of insurrection, is incorrect in statement and unjust in its operation and effect.

Resolved, That the magistrates and other civil officers of this county have uniformly been found on the side of law and order; and if they needed any assistance in the performance of their duties, it would have been readily afforded them by the military of Staten Island, who have ever promptly responded to the call of the civil magistrates.

Resolved, That the sending of troops among us from other parts of the State was not only an unnecessary step, but that it was also a groundless imputation on the patriotism and courage of the Staten Island militia.

Resolved, That the occupation of this Island by an armed body of men,

in a time of profound peace, violates the whole spirit of our laws and institutions, and that military intervention can only be justified under circumstances where the civil power has been appealed to in vain in support of the laws.

Resolved, That the spectacle of a Criminal Court now quietly sitting in our midst, and calmly inquiring into the guilt of parties charged with the offences alluded to in the Governor's proclamation, furnishes conclusive evidence that no such circumstances exist at this time in the county of Richmond.

Resolved, That the Board of Health of the town of Castleton are entitled to our respect and gratitude, for their honest and zealous performance of duty in endeavoring to protect the lives and health of their constituents.

Resolved, That all action toward the construction of permanent hospitals on the site of those recently destroyed, with the intention to perpetuate the existence of Quarantine on this Island, is, in view of recent legislative acts, an illegal and unauthorized assumption of power.

Resolved, That, whereas much diversity of opinion exists in the community, and even in the legal profession, as to the limits of our natural rights when these conflict with a nuisance existing under color of law, we will take measures to have the questions growing out of the recent disturbances at Tompkinsville and Seguin's Point brought to the cognizance of our courts, in order that it may be authoritatively settled whether the inhabitants of Richmond County, equally with the rest of their fellow-citizens, are to be permitted to enjoy the common privileges of life and health, or whether our people must be driven from their homes, and a large part of this beautiful island devoted to pestilence and death.

Resolved, In order that justice may be done to the character of the people of this county, that a petition be presented to the Legislature at its next session, asking the appointment of a committee to inquire into the causes of the recent disturbances, and also praying for such further legislation, as may be necessary to rid us entirely and at once of an establishment every way fatal to those interests which are naturally dear to every man—health, and life, and happy home.

The following communication from the citizens of Kings County was then read :

NEW UTRECHT, KINGS COUNTY, }
Wednesday, Sept. 15, 1858. }

Col. BARRETT, Chairman, and others :

Gentlemen,—In consequence of not being able to be present and express our sentiments by delegation at your meeting on the 20th inst., we take the liberty of presenting our views upon the Quarantine matter in this letter, which, if you think proper, may be communicated to the meeting.

The universal opinion of the residents of our vicinity is, that the time has arrived when the public safety requires that the Quarantine should be

removed from its present site ; that the health not only of the residents of Richmond County and the opposite ones of Long Island, but also those of the cities of New York and Brooklyn, requires its removal, for it is getting to be more and more evident that yellow fever at Castleton or Southfield, in Richmond County, or Bay Ridge or Fort Hamilton, in Kings, is yellow fever in New York and Brooklyn.

The original location of Quarantine on Staten Island was probably a proper one, for at that time there were few or no dwellings in its vicinity ; the population on Long Island then was sparse, and the trade of the port comparatively insignificant. The fifty or sixty years which have rolled by since its location have made vast changes ; the uninhabited tract on which it was located has become densely populated ; the shores of the bay, instead of being dotted with solitary farm-houses, have become filled with villas and villages, and the solitary arrivals from southern infected ports have been succeeded by fleets. New York, as late as 1810, had only a population of 96,000 ; the present limits of the city of Brooklyn, of 5,000 or 6,000 ; the former, in 1855, numbered more than 600,000, and the latter, 200,000. Brooklyn, which in 1810 had less than a mile of street located in the vicinity of the Fulton and Catharine Ferries, on which the houses were contiguous, now shows a contiguity of buildings to Red Hook Point and to Twenty-seventh street, so as to cover the shores of nearly the whole of Gowanus Bay, without taking into consideration her extension in the opposite direction.

During this same period Jersey City has grown from an insignificant hamlet to a city, and the surrounding country, nearly to Bergen Point, is whitened with dwellings. These vast changes have taken place within the last thirty years. The causes which produced them are at work and operating, and will continue to operate, unless some mighty convulsion of Nature, intestine commotion, pestilence, or foreign invasion and destruction should intervene to arrest them. Individuals are born and living who will probably see the whole bay of New York, on the east side, from Fort Hamilton to Brooklyn, and on the west side, from the fortifications on Staten Island to Jersey City (including the shores of Bergen) closely packed with buildings and teeming with population.

If the population of these cities should continue to double every fifteen years, as they about have done for the past forty-five years, it will give them in 1885 (twenty-eight years hence) the enormous one of 3,200,000, and in 1900 (forty-three years hence) 6,400,000. Reduce these figures one-half, and there will yet be sufficient to cover the shores of the Bay, so as to make one continuous city. Viewing the matter in this light, and taking the past as our guide, with the probable continued increase of our Southern commerce, it appears to us to be folly and madness to attempt to rebuild and maintain the Quarantine at its present location, unless it be for some European vessels. It would be almost as proper to locate it on Governor's Island or the Battery.

In our judgment, the Lower Bay or Sandy Hook is the proper location. If other measures fail, we suppose the General Government, under its power to regulate commerce, may establish Quarantines, and get possession of Sandy Hook for such purposes ; or, at the worst, the State may dock and

fill in land on one of the shoals in the Lower Bay for yellow fever purposes, the most dreaded of the evils, and compel all vessels from points infected with this disease to ride out their probation at the Southwest Spit, instead of filling the inner harbor with them. Coney Island, which has been recommended by some in consequence of its direct and short land communication, would be more dangerous to New York and Brooklyn than the present location, which, together with its moving sands, changing position, and shoal waters, forbids it being thought of. The population on the shore of Staten Island have had several severe visitations of yellow fever, and they have been sorely tried. We, too, on the Long Island shore, in 1856, in consequence of the imprudent and reckless management of the Health Officer, and not from intercourse of the inhabitants with the vessels, as has been charged, (which every resident knows did not take place and never had existence except in the imagination of the aforesaid functionary and his abettors,) have also suffered severely and been driven from our homes, the disease striking down many of our best and most useful and esteemed citizens.

Although thus smarting under the evils of the present arrangement, yet, as law-abiding citizens, we cannot approve of violent measures, and continue to hope and believe that the good sense of the community, and their own interests, will ere long open their eyes to the true policy to be pursued in the premises.

JOSEPH CROCKER,
CHARLES W. CHURCH,
GEO. J. GELSTON,
ISAAC E. BERGEN,
CHAS. J. GILBERT,
JACOB J. BERGEN,
ELIZABETH D. CHILD,
J. A. PERRY,
EDWARD KENT,
JOHN J. BENNETT,
JOHN CLIFTON,
WINANT E. BENNETT,
HOYT PALMER,
JACQUES B. WARDELL,
JACOB WARDELL, Jr.
JOHN W. MUSPRATT,

J. REMSEN BENNETT,
JAQUES VAN BRUNT,
J. HOLMES VAN BRUNT,
FRANCIS E. BERIEN,
RICHARD R. BENNETT,
JNO. B. KITCHING,
JAMES A. ROBINSON,
J. HOWARD KITCHING,
DANIEL RICHARDS,
MARTIN BENNETT,
JACOB WARDELL,
SIMON S. WARDEN,
WM. H. BOGLE,
W. C. LANGLEY,
JOHN KING,
JOHN BULLOCK,

TUNIS G. BERGEN, and others.

The meeting was then ably and eloquently addressed by ALVIN C. BRADLEY, N. DANE ELLINGWOOD and GEO. WM. CURTIS, Esqrs., and Dr. WM. C. ANDERSON; and, after appointing an Executive Committee, the meeting adjourned.

Note A.

ASSEMBLY DOCUMENT No. 60.—YEAR 1849.

REPORT

Of the Select Committee appointed by the House of Assembly on the 11th April, 1848, to examine and report as to whether the Quarantine establishment, in the county of Richmond, should be removed from its present location, and to what locality said Quarantine establishment should be removed.

The select committee appointed pursuant to the resolution adopted by the House of Assembly on the 11th day of April, 1848, and which is hereto annexed, respectfully report—

That your committee, shortly after the adjournment of the Legislature, entered upon the duties imposed upon them by the resolutions. The subject is one of great importance, involving as it does not only the interests of the great body of our citizens connected with the commercial concerns of the State, but also, what is of far greater importance, the protection of the community against the spread of those diseases which are pestilential or infectious in their character; and also considering that these interests necessarily conflict, it is one of peculiar delicacy and difficulty; and in order to come to a correct conclusion, your committee felt justified in devoting a large portion of their time to the matter. They have endeavored to consider it without regard to the wishes of those whose feelings or whose interest would bias them either one way or the other.

The resolution, it will be perceived, contains two branches of inquiry: *First*, Shall the Quarantine establishment be removed from its present location? and, *second*, If so, to what locality should it be removed? Your committee, in answering these questions, have used their utmost endeavors to procure all the information practicable, not only from personal inspection and examination, but they invited information by notices through the public prints, for all those who felt an interest in the subject matter to appear before them, and also by direct request to such as were supposed to possess either peculiar knowledge, skill or experience, to give your committee the benefit of that knowledge, skill and experience. The result has been, they have collected a mass of facts and opinions which is appended hereto; and they will now endeavor to set forth, as succinctly as may be, the conclusion of their own minds from such personal inspection and examination and the evidence produced before them.

As to the first branch of the inquiry: Should the Quarantine establishment be removed from its present location? To this we unhesitatingly answer, Yes; and for the following reasons:

The great object of a Quarantine establishment, to use the language of the statute, is “to prevent the spread of pestilential or infectious diseases,” to protect the community, and to guard the public as well against those diseases which are not indigenous here, but which, coming from other countries, if once permitted to get a foothold in our crowded cities and villages, and there finding the necessary aliment to sustain, carry dismay

and death with them, (the yellow fever and cholera are instances of this class of pestilence,) but also diseases of another character, which, though they may and do frequently originate here, also come from abroad, yet, by prudent measures, are arrested and confined within circumscribed limits, and are thus prevented from becoming epidemic. The ship or typhus fevers and smallpox are well known examples of this class of pestilence. In short, the great end of a quarantine, as has been well said, is precautionary. * * *

The present Quarantine establishment is located on the northeastern shore of Staten Island, and comprises about thirty acres of land, including about five acres belonging to the United States, and used by them for revenue purposes, connected with the establishment. * * * *

When the institution was placed on Staten Island, the population was sparse; there were but few inhabitants in the neighborhood, and none but those whose business, either directly or indirectly, was connected with the Quarantine, and these had to give bonds with heavy penalties not to enter the city of New York during the Quarantine season. Since then, large and prosperous villages have sprung up in the immediate vicinity. Where formerly there was nothing but farms and a few farm buildings, now the villages of Tompkinsville, New Brighton, Stapleton, and Factoryville are teeming with busy life. Where the population was then counted by tens, it can now be estimated by hundreds. The rapid increase of the neighboring city and the increasing demands of her commerce have driven hundreds of her citizens to Staten Island and to the suburbs. All the lower wards of the city, where formerly dwelt her merchant princes, have been in a great measure abandoned as residences and devoted to stores and warehouses, and their residents have been compelled to seek habitations elsewhere. The growth of the upper part of the city has been the consequence, and the numerous beautiful villages which now dot the shores of the East and North rivers and of Staten Island, have sprung up as if by magic, where our merchants, mechanics and others whose business is in the city, seek rest and refreshment after the toils of the day are over, in the more salubrious air of the country. At that time, a few row-boats or periaguas were the only means of conveyance, and afforded ample facilities; and from two to five hours was the ordinary time of passage from the upper end of Staten Island to Whitehall. Indeed, within a very few years, a single steamboat, making but two trips a day, furnished all the required means of intercourse, while now the ferry-boat makes its hourly trip and is crowded with passengers. Then the enforcement of the Quarantine laws was comparatively easy; but now, from the great facility of intercourse, it is impossible. The means of communication are so easy that instances are given where whole ships' crews have been stealthily carried off in the night; and the passengers by the ship which recently brought the Asiatic cholera into the harbor, and which created so much alarm through the State, becoming tired of the restraints of the Quarantine, eloped *en masse*; nor was there any power to prevent it. There is no means, from the nearness of the city, of keeping up a sufficient police force, unless, in the language of one of the witnesses, "a coast-guard was employed to row around the shipping, and a regiment of soldiers were stationed at the lazaretto." Another fruitful source of danger, if received opinions be correct, is the constant visiting the establishment by friends of the patients. * * *

Now, if there is any truth in the theory, and any reliance to be placed upon the commonly received opinion, that these diseases are highly infectious, and that the infection may be carried in the clothing of those exposed to it, and thus spread, it would seem to follow that these persons coming directly from the infected atmosphere of the hospital, and the bedside of the sick, must present a fruitful source of contagion; and, indeed, the alarming extent to which ship fever prevailed during the years of 1846 and 1847, may no doubt in a great measure be traced to this source; and that it did not become epidemic, and that the city was not devastated by the pestilence, was certainly not owing to any protection afforded by the Quarantine. Nor is there any means of remedying this difficulty; the law has taken all the power to do so from the Health Officer; and the Commissioners of Emigration say that the dense population surrounding the establishment, the great facility of intercourse, and the want of practical means of maintaining a proper police with the present arrangements at the Quarantine, beside the great inhumanity of preventing the visits of friends to the patients, renders it impracticable, if not impossible, to enforce a rigid quarantine. * * * * *

It is to be remarked, too, that this intercourse, frequent as it is, and unrestrained as it is, is directly through the contagion, the track of the ferry-boat as she makes her frequent trips to and fro from the city of New York, being necessarily through the midst of the fleet of vessels detained at the Quarantine, and it requires but a breath of wind, as experience has shown, at any time, with a congenial atmosphere, to waft the poisonous miasma from the infected ships, and blow the spark of pestilence into a flame. Nor is there or can there be any power to prevent the intercourse, however great the necessity might be. This the experience of the past summer has fully demonstrated; for when the Board of Health, with all the powers with which the law has clothed them, ample though they be, undertook to prevent this intercourse, and to prescribe the limits of communication between the city and portions of Staten Island, its only effect was to prevent the ferry-boat from landing within the infected district, while those who desired to visit the city had but to go a short distance to Stapleton, on the one side, or New Brighton, on the other, to find there every facility of communication, and the evidence shows instances where persons spent the night in tending upon those sick with yellow fever, and yet came to the city daily. Those persons were, it is true, put to some inconvenience, and a trifling additional expense, by the attempted establishment of a cordon; yet the city was in no way protected from the introduction of pestilence. An examination of the evidence will show other facts equally strong, which prove that the present Quarantine wholly fails to effect the object for which it was instituted; and it is from these facts, as well as personal inspection, your committee unhesitatingly came to the conclusion, that the Quarantine in its present location is no quarantine, but, to use the language of one of the witnesses, "It is a perfect farce and a burlesque;" that while it is attended with all the evils, and open to all the objections of the most rigid quarantine, the great end of its establishment is frustrated, and that, so far as its efficiency is concerned, in affording protection against the spread of pestilential or infectious diseases, it might

as well be placed upon the Battery, or in the Park, as in its present location upon Staten Island ; and for this reason the establishment should be removed.

There are other reasons which go strongly to show the absolute necessity of its removal. We have before adverted to the fact of the great increase of emigration. This increase requires a much larger space than is afforded in its present site. There is not sufficient room for the increased wants of the establishment. Until recently, the persons there were comparatively limited in number, not to exceed four hundred in a year, and eighty patients in the hospitals at one time was considered a large number. One of the late health officers says that during the years 1840, 1841, and 1842, the number of patients varied from eight hundred to one thousand. For such a number the accommodations were ample. The hospitals were only used for the specific purpose for which each was built, and the yellow fever hospital was never used except for that disease, and was often closed entirely. Then the number of patients was few, and the hospitals were closed from November to April. Now, they are kept permanently open and crowded with sick, many laboring under the most malignant form of disease, and many not the legitimate subjects of quarantine, but perhaps emigrants from the city of New York. At the present time the numbers have increased to nearly seven thousand in about nine months, with from seven hundred to a thousand constantly there, and "the ery is, still they come." To meet this increasing demand, new hospitals have been erected, first the north hospital as it is called, then the shanty hospitals as they are termed ; but still there is a want of room, and so crowded have they become, that, as one of the physicians tells us, although the hospital of which he has charge is calculated only for about one hundred and twenty, he has been compelled to crowd in over two hundred. It is true that a portion of them were convalescing and well enough to be out during the day, yet all were compelled to sleep within the hospital, and the natural result was many suffered from relapse, and some died. Another and serious evil of this want of room is, there is no means of separating the sick from the well and convalescent, but all whom the laws require to be detained at quarantine, or whose payment of the tax gave them a right of admission, are compelled to be mixed up together, and hence we have seen that those whom ordinary disease has spared, have become the helpless prey of the pestilence, and cholera and yellow fever have found their ready victims among the convalescents of other diseases. For a more full statement of this matter, we refer to the communication of the health officer and his associates herewith submitted. Nor can this objection be obviated at the present location. All the present grounds are fully taken up ; and from the manner in which the land surrounding the establishment is owned and held, it certainly would not be expedient, if practicable, to enlarge the boundaries of the lazaretto of the present quarantine. * * * * *

We have thus far considered the question only in relation to the efficiency of the quarantine in its present location in effectuating the great object of its institution ; in affording protection against the spread of infectious or pestilential diseases ; and have arrived at the conclusion that public policy requires its removal. We now propose to consider it in respect

to its local effect upon Staten Island, and the complaints made by the residents there in relation to it. That its present location exerts a baneful influence, that it has been, and is a most serious drawback upon the prosperity of the place, and that the complaints made by those residing there are not unfounded, cannot be disputed or denied.

From the great concentration of disease there, it must necessarily be dangerous to the health of the population, where that population is dense; and this is the most serious ground of complaint. The inhabitants there are daily and hourly exposed to infection. Instances numerous are given of the spread of that most loathsome scourge, the smallpox, from the vicinity of the quarantine lazaretto. One person received the infection from being on board the same ferry-boat where a person sick with the disease was being conveyed from the city to the Quarantine Hospital. Other cases are stated, where it was conveyed by social or business intercourse with persons connected with the establishment. Others have taken it from contact, in places of amusement, with persons who have been exposed; and one instance is given, where the contagion was communicated in church. The deleterious effect of the vicinity of the establishment upon the health of the inhabitants has been fearfully proved by the experience of the past season.

In the month of August last a number of vessels arrived infected with that scourge of the south, yellow fever. The infected vessels were anchored within the prescribed limits, and the sick were taken to the hospitals. The ferry-boats were forbidden to land, and all intercourse was prohibited, and, as far as possible, prevented; yet, in a few days, the disease appeared among the boatmen and others employed at the Quarantine Dock; next, those employed at the steamboat wharf adjoining were seized. But surely the pestilence marched on on its deadly mission for nine days, when it reached its extreme southern limit—a distance of one and a quarter miles from its starting point—attacking almost all who came within the infected limits; and, in the short space of about a month, one hundred and fifty (exclusive of those within the Quarantine inclosure) were attacked, and out of these over thirty fell victims to the disease, and died with the dread *vomito*. All business was stopped, and those who were well fled, affrighted, from the scourge; and but for this, no doubt, the ravages of the pestilence would have been much greater. Nor can it be said it was owing to any fault of theirs, nor to their own imprudence. They had not exposed themselves to it, nor did the infection come from the hospital; but the poisonous miasma was blown from the ships to the shore, and all were seized who came within the polluted atmosphere. Within the Quarantine inclosure, too, its effects were most revolting to humanity. At the time numbers were there convalescent, and almost ready to be discharged, yet, when the disease appeared, the non-intercourse was declared, and an embargo was laid. Those who were there, were compelled to remain—the sick with the well—and numerous were the victims to the scourge from this cause. So, too, of the cholera. The statement of the health officer gives a list of twenty-seven persons, sent there with other complaints, and those not infectious, who, caught there on the arrival of the disease, were tabooed, and compelled to remain. They now moulder in the Quarantine Cemetery—a fearful argument against the unholy alliance of a pauper es-

tablishment with a health department. Nor has the past season alone furnished cause of complaint on this ground ; for the very first season the Quarantine was located there, some twenty-five of the inhabitants sickened with yellow fever, and it proved fatal in every case with but one exception. And every season, from that time to the present, when yellow fever has been there, it has prevailed, to a greater or less extent, without the Quarantine walls.

Not only is the health of the inhabitants endangered, but the prosperity of the place is injured, the value of their property depreciated, and their business in a great measure ruined. There are other sources of complaint detailed by the witnesses, and which will be found in their evidence, herewith submitted, which occasion continual annoyance and discomfort to the residents, and render the enjoyment of life and property uncomfortable. In the language of one of the witnesses, "it produces an interference with the full enjoyment of their natural rights, which no other portion of the people of the State are subjected to, and which cries aloud to the proper authorities for redress." In short, it is an undoubted *nuisance* where it is, and of such a character that it has frequently caused the interference of the grand inquest of the county.

But, it is said, the persons who now make these complaints have settled there since the Quarantine was located there ; that they went voluntarily, knowing of the existence of the nuisance, and that now they have no right to complain. To this, there are several answers : First, the establishment was placed there against the wishes of the people, and contrary to their earnest remonstrances. It was stoutly opposed at the time by the representative from that county ; but the State, in selecting this location for their Quarantine, exercised their right of eminent domain. They took the land needed for the public purposes, contrary to the wishes of the owner, only paying him for it what appraisers, appointed by themselves, adjudged it to be worth ; and now, though these people have mostly passed away, yet their descendants and successors have succeeded to the rights of the original owners, and are now asking here for relief from a nuisance which has become intolerable. To this relief, it is believed, they are *legally* entitled. The law says, "that which was a nuisance at its commencement, to occupiers of houses in the neighborhood, will not be less a nuisance to succeeding occupiers of the same houses, though they may have come into the neighborhood after the nuisance was established there. Carrying on an offensive trade is a continual injury to the occupation of houses adjoining, and every succeeding occupier will have all the rights of occupation, and may complain of their infraction, though those rights may have been frequently infringed in the time of his predecessor, and though he takes the house knowing of the existence of the nuisance ; and to *volenti non fit injuria*, we may answer, he might have taken the house knowing the nuisance to be wrongful, and relying on his right to abate it ; nor can it be presumed he calculated on the continuance of that which is wrongful."

But there is another answer to this objection. If the argument is sound, that because they have gone there knowing of the existence of this nuisance, and therefore have no right to complain, and that the State has a prescriptive right to continue it, then we say these persons may answer

and insist the establishment shall be kept strictly for the purpose for which it was instituted, and that the nuisance to which they are compelled to submit shall not be increased. They may say, you have selected this place as your Quarantine location, but you have converted it into a large pauper establishment, which you have no right to do, and to which we object; we must submit to stand between you and the yellow fever, and we may be compelled to be the pest-house of the State; but you have no right to convert the place into a charnel-house and make it the potter's field for all Europe. The law has said, "That if a person carry on a noxious trade, though in a place where it was anciently established, in a manner more noxious than before, he is liable for the annoyance he causes his neighbors, additional to that which he can justify by prescription or pre-occupation."

In the opinion of your committee, this common-sense rule, as well as rule of law, applies with great force to the present case; that the Quarantine establishment has become not only more dangerous to the health of the neighborhood, but the offensive effluvia and disgusting exhibitions complained of, the greater amount of disease concentrated there, has not only rendered the establishment more noxious than heretofore, but has rendered it in a much greater degree a continual source of annoyance and discomfort, and has rendered the enjoyment of life and property much more uncomfortable; and that for these reasons the residents there have good cause of complaint, and have good right to ask to be relieved from this annoyance and discomfort.

It may well be doubted, however, how far the State is justified in setting up this technical and hard rule of right, if right there is, against the equitable demand of a portion of her citizens. It has been often said, and well said, that the State never pleads the Statute of Limitations against a just claim, nor does she ever enforce a strict legal right against natural justice and equity; and we trust it will equally be held she will never insist on the continuance of a nuisance where her only claim to do so is founded on the mere right of pre-occupation or prescription. If this had been held a valid reason, the City Alms-House would still have been located in the Park, gunpowder magazines would still be found in the heart of your city, and the lazaretto would have continued on Governor's Island. But laws require a moral force, without which there is no authority, and when the advancing tide of population rendered their location improper, however judicious was the original selection, they were compelled to give way; popular opinion or popular prejudice demanded they should retire, and in accordance therewith we have seen the location of such establishments changed from time to time. Apply the same rule to Staten Island, and the Quarantine will be removed.

For the reasons therefore :

First.—That the Quarantine establishment, in its present location, wholly fails to effect its object, and cannot be made efficient for the purpose for which it was instituted;

Second.—Because it is injurious to the health and fatal to the prosperity of Staten Island, and the complaints urged against its continuance there are well founded;

Your committee are of the opinion the location should be changed, and respectfully recommend its removal. * * * *

Dated January 29, 1849.

WESSELL S. SMITH, ALEXANDER STEWART, GURDON NOWLEN,	}	Committee.
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DOCUMENTS APPENDED TO THE FOREGOING REPORT.

Statement of Dr. ALEXANDER B. WHITING, Health Officer.

(Dated January 19, 1849.)

* * * * *

The yellow fever has prevailed at Quarantine and in the adjoining villages of Tompkinsville and Stapleton to a greater extent than ever before since the existence of Quarantine. The number of cases in the hospital was thirty-seven, of which twelve died. Dr. Samuel R. Smith reports 110 outside of Quarantine. There were probably more than 150, of which number twenty-nine died. It commenced on the nineteenth of August and continued until the 21st of October. * * * * All the usual precautions were taken to isolate the ships. The sickly vessels were anchored in positions where they always have been located—in or near the middle of the stream, and every measure taken to prevent communication with them other than that necessary through the agents and boats of quarantine. As soon as the character of the disease became evident, strict measures were adopted to intercept the intercourse between the city of New York and Staten Island, and between the Quarantine and adjoining villages; but this was superfluous, as the disease prevailed to a greater extent outside than within the Quarantine inclosure. * * * * The disease first prevailed outside the Quarantine walls among the boatmen of the revenue department and health officer's barge, and almost simultaneously several persons, whose business exposed them at the Quarantine landings, were affected. In a few days, numbers residing along the shore were attacked, without the possibility of any communication with Quarantine or each other—workmen in their shops, and females who were confined to their own houses. Some of the persons who were first attacked, undoubtedly contracted it from immediate exposure to the ship, but the subsequent cases can only be accounted for on the supposition that it was conveyed by easterly winds to the shore. It is well known that during the prevalence of yellow fever the boundaries of the disease are extended to a considerable distance by the force of a strong wind existing for even a short time.

That it does not effect the objects of a Quarantine, I adduce the same facts, that its proximity to flourishing villages, who claim the protection of these same laws, and who have an equal right to their provisions, has

sacrificed many valuable lives, and, moreover, this contiguity to a large population in constant intercourse with the parts to be protected, exposes these, under favorable circumstances, to the danger of receiving the disease. New Orleans can be shut out, but Staten Island cannot; and the yellow fever cannot be hindered from infecting Staten Island (until man acquires control of the elements) so long as it continues a foul-ship station. * * * * *

More recently, the cholera has tried more strongly our present means of quarantine. The attempt has been made to detain persons infected with the disease; but with the facilities of intercourse with the city of New York, the Chinese wall would be no protection. And with every practicable effort to keep the infected persons from the city, they have reached it, and a number have been there attacked, thus effectually frustrating the intentions of the Quarantine laws. That this has been owing to the geographical relations of the locality of Quarantine, and not to a lax administration of its laws, I invite the most rigid investigation. Had the Quarantine been in an isolated place, with the accommodations that have existed always, until it was converted into an Emigrant Hospital, the sick could have been immediately and thoroughly separated from the well, and their release been effected in a far shorter period than is practicable under the present condition of things.

With regard to changing the Quarantine station, I shall say but little. The present locality for anchorage ground and hospital cannot be surpassed. But the paramount requisite, isolation, is frustrated by its contiguity to populous villages, separated merely by a wall.

* * * * *

AFFIDAVIT OF MARINUS H. VAN DYKE.

I am Assistant-Physician at the Marine Hospital; have held that position for six years. * * * * * In my opinion, the Quarantine, as at present located and managed, does not effectuate the object of a Quarantine, for the reason that villages are contiguous to it, whose inhabitants are in constant intercourse with New York, and the passage of the ferry-boat through the fleet of vessels quarantined, and its nearness to New York, and then the vessels thus quarantined, are liable to be visited by small boats at any time, and the Health Officer, from the number of small boats, and their similarity, cannot identify the offenders. * * * * * Under all circumstances, I do not consider the present location of the Quarantine a proper one, and I consider it highly necessary for the protection of the city of New York, that it should be removed. I own no real estate on Staten Island, and have no property interest there.

SAMUEL R. SMITH, M. D., being duly sworn, deposeth and saith: He is a practitioner of medicine, and has resided in the village of Tompkinsville, in the practice of his profession, more than twenty years; that he has occasionally, during that period, seen cases of yellow fever, among lightermen, pilots, and others employed on board of, or having intercourse with, infected vessels.

In September, 1830, I saw two cases of yellow fever; both patients were advanced in years, a male and female, residing on the river bank; one about 250 the other about 300 yards south of the Quarantine; no intercourse, directly or indirectly, with any source of infection could be traced in these cases, and the belief was, that the infection was blown ashore from the vessels at the anchorage; both terminated fatally with black vomit.

In August, 1833, under still different circumstances, three of our citizens residing at the Nerrows, two and a-half miles from the Quarantine, lost their lives by the yellow fever, communicated, it was believed, by a bed which drifted ashore opposite their residence; when these cases occurred the population was sparse; now the whole shore is densely populated.

The present year (1848), our citizens have suffered still more severely from yellow fever. In a recent communication to the Health Officer, Dr. Whiting, I gave the names, dates of attack, occupation and place of residence of one hundred and ten patients attacked with yellow fever, who were under my care, and of whom eighteen died. From the best estimate I can make, the total number of cases which occurred this season was between 150 and 180, and the number of deaths about thirty. The disease commenced simultaneously among the boatmen and others employed at the Health Officer's dock, and persons employed at the steamboat dock adjoining the Quarantine, and in three or four days extended South along the shore to Stapleton, attacking only those residing immediately on the shore, or whose employment was there; and in nine days reached its extreme southern limit at Vanderbilt's landing, where but two cases occurred. Its northern terminus was at Major Frazer's, within the Quarantine ground.

The source of infection was undoubtedly vessels from New Orleans, (where yellow fever prevailed,) riding at their ordinary anchorage opposite the Quarantine; said vessels having been employed in transporting troops, among whom cases of fever prevailed. The means by which the infection was communicated was threefold. Most of the cases occurring from its commencement on the 19th of August up to the middle of September, were probably communicated through the medium of the air. * *

* * * A second mode of propagation was probably in a very few cases, among lightermen and boatmen, by direct intercourse with the infected vessels. * * *

When the infected vessels were removed, we hoped, after the lapse of a few days, that the disease would disappear; and so it did from the greater part of the infected district, but continued to linger in some small locality, extending along the shore south from the Quarantine ground about 300 yards. Here the poison, animalcular, miasmal, or whatever its nature, had evidently obtained a foothold, and cases continued to occur until after severe frost, the last case being on the 21st of October. The cases were not many, probably for want of subjects, for most of the inhabitants had fled, and the few remaining had either passed through the disease or were unsusceptible to its influence. * * *

Numerous instances could be cited since the Quarantine has been established here, of the inhabitants of this village suffering from yellow fever, communicated from the vessels at anchorage, and it is an occurrence which human foresight can hardly

guard against, inasmuch as the shore is now occupied by a dense population, and wherever these occur, the *two circumstances*, a continued prevalence of easterly winds and the presence of infected vessels at the anchorage, those residing on the shore, even for a long distance from the Quarantine, as we have seen, are exposed to imminent danger.

Twenty years since, when I first located myself at Tompkinsville, it was comparatively as far from New York as Sandy Hook now is. The steamboat Nautilus made but two trips a day, and occupied from an hour and a half to two hours in crossing, each way. There were, if I recollect right, but *two* gentlemen doing business in New York who crossed daily in the boat; now there are hundreds. Then all, or nearly all, vessels from sickly ports discharged their cargoes at Quarantine; now very few do so. Most of the inhabitants were engaged in lightering, or the occupations connected with the Quarantine, and all such had to give bonds, with a heavy penalty, not to enter the city of New York during the Quarantine season. The number of patients in the hospital were few, and it was closed from November until April. Now, the hospitals are kept permanently open, and crowded with patients, many of whom are laboring under infectious diseases, and the intercourse between the hospitals and the village and the city unrestricted. * * * * * A new source of danger to the city from yellow fever has lately arisen. Several instances of yellow fever have occurred from the bedding and clothing of those who have had the disease being thrown overboard from the vessels and drifting ashore, the infection not being destroyed by immersion in water. Now, the shores of Staten Island and Long Island receive these infected articles, and these shores are daily resorted to by German rag pickers, who collect whatever comes to hand, and send it to the city, and there is nothing improbable in the supposition that sooner or later yellow fever may be introduced into the heart of the city by this means.

As regards ship or typhus fever, our Quarantine regulations are all directed to the comfort and welfare of the sick, and no means are taken to protect our own citizens. There is hardly a considerable town or village in the United States which has not suffered more or less from this scourge; and could the number be accurately ascertained, the community would be shocked and appalled at its magnitude. * * *

Dr. JOHN T. HARRISON, being duly sworn, says: I was formerly health officer at the Quarantine establishment at Staten Island; it was from the year 1823 to 1829; was an assistant there previously; was there in 1811 and 1812, also from 1815 to 1823; was in the establishment altogether about ten years previous to my appointment as health officer; I am somewhat conversant with similar establishments; am a physician by education; am intimately acquainted with the Quarantine at Staten Island, and have been for more than thirty years; the population has increased very considerably during that period; I was not much acquainted with the establishment when first located there, which was in 1798; was first attached to it in 1811; the population in the vicinity was then (in 1811) very sparse; there were comparatively but a few persons in the vicinity; the population was limited; on the north side of the Quarantine ground, at

that time, too, there was but one boarding-house and one dwelling-house ; the boarding-house was for the accommodation of passengers in vessels quarantined ; with the exception of those two, there was not a dwelling-house within nearly half a mile in that direction ; on the west side there was but one dwelling-house within a considerable distance ; but two dwelling-houses within a mile in the direction of the turnpike ; on the southerly side there were several houses ; one a boarding-house, for the accommodation of passengers in vessels quarantined, and some three or four other dwellings between that and Van Duzer's Ferry ; there were no other dwellings except these, that I recollect, within a quarter of a mile, or nearly that ; these were the only houses in that direction ; of the present population I can only say, that an entire village has sprung up in the vicinity of the Quarantine ; it has sprung up since 1818 ; the population of that shore of the island to the Narrows has greatly increased ; at that time it was sparse, consisting of farms and farm dwellings only ; the present population is comparatively a very dense population, and their occupation is entirely changed ; and a large proportion of the present residents are business men in the city of New York.

Question. What is the comparative practicability of carrying out the present laws in relation to the Quarantine ?

Answer. It is certainly more difficult to carry out the law in the present state of things than formerly, so far as respects its efficiency in protecting the population of the shores of Staten Island and the city of New York from infection. A very rigid enforcement of the law at present will carry out the purposes of it, so far as to prevent communication with vessels at Quarantine ; but that, from the increase of the population on the shores of Staten Island in the vicinity of the Quarantine, as well as from the increased facilities for intercourse with the city of New York, the liability of communicating the infection to the city is greatly increased ; and that no laws, however rigidly enforced, can always prevent the clandestine introduction of infected articles into the city. In some instances, the disease (yellow fever) may be communicated to the population along the shore from the shipping, as the experience of the past season has shown.

There are two sources of danger :

First.—That arising from direct communication of persons with vessels lying at Quarantine.

Second.—That which arises from the infection which may be carried ashore in currents of foul air from infected vessels, which may have been incautiously anchored too near shore ; the population having become so dense now that the danger has greatly increased. I have known instances of the spread of infectious diseases from the cause last mentioned before ; I have observed instances of the yellow fever, while connected with the Quarantine, which occurred along shore, which could not be traced to any other source than the one above named, several different seasons. These cases occur occasionally along the shore and in the immediate vicinity of the Quarantine. * * * * I was invited to see three cases at the Quarantine, at what time I cannot say precisely, as I have not my notes with me ; visited with the health officer and resident

physician three cases located in the village of Tompkinsville, and they were cases of yellow fever, characterized by all the symptoms usually attendant on the disease. These cases could not be traced, as I understood, to any direct communication the persons had with the vessels. The inference I drew was, that the air was infected. * * * *
 The present location of the Quarantine, at the time it was located, was very proper. The inhabitants at that time strongly protested against it, as I have been informed, from fears of contagion, and those fears, as my experience teaches, have been verified.

In addition to the isolated cases along the shore in 1821, we had many cases in the Quarantine. On the 3d of September of that year, a violent gale occurred and stranded every vessel at Quarantine, except one or two. Two vessels were stranded very near to the U. S. wharf, in the inclosure. In a few days after many persons in the neighborhood were taken sick, and a number of deaths occurred—I believe in the neighborhood of twenty-four or twenty-six—and there were some forty-five cases in all; and many persons in the vicinity of the hospital left their houses in consequence. I mention this fact, not to show the evils which the inhabitants suffered, but to show the danger of contagion.

Dr. JOHN S. WESTERVELT, being duly sworn, says: I have been familiar with the operation of the Quarantine laws since 1823, when I was appointed assistant health officer, and held that office until 1828. In 1829, I was appointed health officer, and held that office until 1836; I have since resided in the immediate vicinity of the Quarantine ground, and have been in the habit of constant intercourse with that establishment.

The Quarantine ground ought to be removed, because its present location defeats the efficient execution of the Quarantine laws. This location is in the midst of a populous village, between which and the Quarantine there is necessarily and unavoidably much intercourse. The families of many of those employed in the Quarantine, such as Custom-House officers, boatmen, &c., reside in the village. The intercourse between their families and others employed in the Quarantine, and between these families and the village population, is constant; thus forming a complete and uninterrupted communication. The intercourse between the village and infected vessels anchored at Quarantine, through lightermen, boatmen and laborers employed in discharging their cargoes, whose families reside in the cities, is very great. I have known one hundred persons thus employed at one time. The intercourse between the Quarantine village and the city of New York is by a regular ferry, a perfect thoroughfare, the principal landing of which adjoins the Quarantine ground—thus establishing a continuous and perfect, though indirect, communication between the Quarantine and the city of New York.

There is also a direct communication between the city of New York and the Quarantine, which, although the law would be ample to prevent in a proper location, in the present is unavoidable. I allude to the fact of healthy persons from sickly vessels detained at Quarantine eloping; and of persons coming from the city at night in small boats, and not only communicating with their friends in the hospitals, but carrying their friends

back with them, bag and baggage. Incredible as all this may appear, it is, notwithstanding, true ; and when the facilities offered by an adjoining thoroughfare, a dense population, and the want of sufficient *force* on the part of the authorities is considered, is not to be wondered at. The intercourse between the city of New York and infected vessels at Quarantine, direct, by means of small boats, is considerable, and for reasons before stated to a great extent unavoidable. It is usual for vessels arriving at Quarantine to throw overboard all the filth and offal which has accumulated during the voyage, affording employment to numbers of scavengers, who, in their boats, are constantly on the lookout to pick up whatever may be valuable, and carry it to the city or village, or wherever else they please. This is supposed to be a very dangerous link of communication between the Quarantine and the city ; and one which cannot be prevented by the present power of the Health Officer. These various avenues of communication between the Quarantine and the city of New York positively exist, and necessarily defeat the effectual operation of the Quarantine laws. It is my firm conviction that no law compatible with our institutions can be made, which will protect the city of New York against the introduction of pestilential and infectious diseases, while the Quarantine ground is in its present location.

The yellow fever prevailed at the Quarantine in the hospitals and in the surrounding village during the past season, caused, doubtless, by the communication between the infected vessels (of which there were an unusual number) and the population, and by the force of the wind wafting ashore the poisonous material as it issued from the open hatches of discharging vessels, and infecting all who were exposed to it near the shore a sufficient length of time, and under circumstances predisposing to disease. Between one and two hundred persons were attacked, and many died. Although the ferry-boats were prevented from landing at their usual places near the Quarantine, and the communication between the Quarantine and the village was stopped, as far as practicable, still the intercourse continued, and that between the village and the city was only abated in proportion as the population of the village was diminished ; the intercourse between the bed-side of the sick and the city was daily, and indeed I may say hourly, from my own knowledge.

In this connection, this question will naturally arise : If the intercourse between the quarantine village where the yellow fever prevailed and the city of New York was so constant and great, what saved the city ? Why did not the fever show itself there ? There is no doubt that in all those who took the fever at the Quarantine and in the village, it was produced by actual contact with the poison from the ships. Now, when the yellow fever is epidemic, in a large population, the case is very different. The poison from infected vessels coming in contact with the atmosphere, is in a suitable condition to assimilate it to itself, imparting to it its own poisonous character, and thus indefinitely extending itself. The condition of atmosphere alluded to appears, from observation and experience, to be produced by great and continued heat, calms, and much moisture ; as these circumstances did not exist the past season, and as it was generally cool, and remarkably dry at the time, is it not reasonable to attribute the escape of the city to that cause ? I will here state a remarkable occur-

rence, which will confirm in a striking manner the necessity of a peculiar condition of atmosphere to promote the spreading of the poison of the yellow fever in large cities, and that such condition does not every season exist.

On the 3d day of September, 1821, the fleet of vessels lying at Quarantine were nearly all driven ashore by a gale of wind; the wharves were washed away, the walls blown down, and thus all the means to prevent communication with the Quarantine ground and with the ships being destroyed, the intercourse with the city was uninterrupted. Merchants and others came down to their ships, and ships and their cargoes, before the period of their quarantine had expired, uncaused, impure, went up to the city. A few sporadic cases of fever occurred; but the disease was, in every instance, confined to persons who had directly communicated with the infected vessels. In the summer of 1822, the brig Florida arrived at Quarantine, having had yellow fever on board. She was discharged, subjected to all the process of purification which the laws then required, rode out her quarantine, and was permitted to proceed to the city, where she made fast at the foot of Rector street, and there hove out her ballast on the wharf. In a short time a case of yellow fever occurred in the house nearest the ballast, and thence extended itself in all directions, until the lower half of the city was filled with the pestilential atmosphere and all the awful and destructive effects of an epidemic yellow fever in a large city were fully experienced. Thus showing that in 1821, under circumstances of the greatest exposure, the operation of the Quarantine laws being actually suspended by uncontrollable causes, the city remained healthy, no epidemic disease showing itself; and in 1824, from the ballast of a single vessel, notwithstanding she had passed the whole ordeal of quarantine, a spark arose which, mingling with the atmosphere, (then congenial,) produced a blaze of pestilence which spread disease and death over a great portion of the city.

There are reasons why the Quarantine should be removed, which, although they may be deemed secondary in importance, still they are of sufficient weight to demand the attention of the Legislature. I refer to the effect which the location of the Quarantine has upon the health, comforts and property of the surrounding population. Their lives are jeopardized, their comforts and many of their dearest privileges frequently destroyed, and their property much depreciated, producing an interference with the full enjoyment of their natural rights, which no other portion of the people of the State are subjected to, and which cries aloud to the proper authorities for redress.

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(*Letter of* RICHARD DELAFIELD, *Major of Engineers.*

NEW YORK, Dec. 26, 1848.

MESSRS. WESSEL S. SMITH, ALEXANDER STEWART, G. NOWLAN,
Committee of the Legislature of New York :

Gentlemen,—In compliance with your request, I now communicate in writing the views entertained by me and expressed to you at the office of the Commissioners of Emigration on the 12th instant. The quarantine establishment should be removed from its present location on the eastern shore of Staten Island for the following reasons :

Both the eastern and northern sides of the island must now be considered suburbs of the city of New York. The residences of merchants and persons of other occupations, together with the workshops and factories of the mechanics, doing business for and daily in New York, surround the hospitals, are only separated by the width of a street bounded by a brick wall, and from which they extend west and south several miles, over which there is now a dense and rapidly increasing population.

The population is now subjected to all the influence and diseases that Quarantine laws are made to guard against, and in its daily intercourse with the city endangers its inhabitants with the introduction of any infectious or contagious disease than can be communicated by free intercourse with an infected atmosphere.

The inhabitants of the city are no better protected under the existing state of things than would be secured by the location of a Quarantine in one of the upper wards of the city, to which strangers should be excluded and cut off only by a wall enclosing it.

The truth of this position I consider as demonstrated by our experience of the past summer. A pestilential disease (said to be yellow fever) was introduced at the Quarantine establishment by a vessel or vessels from a southern port. The limits of the Quarantine and its enclosing walls did not suffice to protect the inhabitants of the eastern shore of the island. The disease extended among them, and the safety of the city rendered it necessary to enforce sanitary laws prohibiting intercourse with this part of the island by the steam ferry-boats. Thus a portion of the inhabitants, whose daily industry and talents constituted a part of that exercised for and in the city, was cut off from and prohibited free and uninterrupted access to their business, and from the fact that their residences and workshops covered a space of some miles square about the Quarantine. This locality has, then, I conceive, ceased in a great degree to be calculated for the purpose of a Quarantine, and should be removed as a measure of justice to the inhabitants of Staten Island, as well as for the better and more perfect security of the inhabitants of the city.

When first established, the isolated position peculiarly adapted it for a lazaretto. It is now, however, no longer isolated ; it is in the midst of a thickly-settled and rapidly increasing suburb of this growing city. At the time of its establishment, no one could foresee the necessity of its contiguous grounds being used for the residences of the merchants, mechanics and others of the city.

So great has the commerce of this port become, that all the lower wards are, in a manner, abandoned as residences and devoted to stores, warehouses and business places. The residences have thus been forced to more distant places.

At first, the facility of the steam ferry rendered Brooklyn the most advantageous and economical resort. As its water fronts and adjacent lots became occupied, other ferries were established, bringing other localities within an economical distance as to time, and adapting them to the residences of the man of business. The omnibus and railroad cars increased these limits on this island; notwithstanding all which, the shores of New Jersey and Staten Island and the whole surrounding country within the limit that the man of business can travel by steam, is held in requisition as the residences of persons doing business in this city. Brooklyn, Williamsburgh, Astoria, Jersey City, Hoboken, Harlem, as well as the eastern and northern shores of Staten Island, have, in consequence, been thus occupied, and from the necessity of the case. Their near proximity, with the facility of steam, has, in a great degree, given them the advantage of the upper wards of the city, and they number more inhabitants at this time than New York did when the Quarantine was established; and, surely, such population is entitled to the same sanitary protection, and, as a consequence, should be freed from the injurious influence of a lazaretto in its midst.

The old alms-house on Chambers street, the poor-houses on Kip's Bay, and the houses of refuge at Ravenswood, were all established under similar circumstances of isolated locality as the present Quarantine. When established, it was not foreseen that some of these expensive buildings, calculated to last for centuries, would be out of place within about a quarter of a century. Yet so rapid has been the growth of the city, that they in time became separated from the inhabitants by walls only, as in the case of the Quarantine. The health of the city, in like manner, became jeopardized; first one, and then another, had to give place to other uses. And for the same reasons the suburb of Staten Island should be freed from an establishment which in like manner endangers the health of its inhabitants, and by their daily intercourse, as a consequence, that of the city.

Being a part and parcel of the same population and of that industry and enterprise which render this harbor and city unrivalled on this continent in prosperity and everything that man aims to possess, it should, in justice, receive that protection and security which has, by the removal of similar evils, been extended to the city proper. * * * *

JOHN B. SIMONSON, being sworn, says: I reside at Staten Island; have lived there all my life, and nearly twenty years in Tompkinsville; the village of Tompkinsville is immediately on the southwest side of the Quarantine; has grown up within the last twenty-five years; it was built up by persons connected with business necessarily connected with the Quarantine; the part thus built up is confined to three or four hundred yards below the Quarantine; the population within the space of a mile in each direction contiguous to this has nothing to do with the Quarantine, and has been

built up within the last ten or twelve years, and is generally occupied by people doing business in New York, and mechanics and laborers necessarily employed in the improvements this class of people has brought there; there are some manufacturing establishments in Stapleton; I could not state with accuracy the number of houses in the three villages, New Brighton, Tompkinsville and Stapleton, but should think they would number from eight hundred to one thousand houses. In this I embrace the whole. The houses built by those connected with the Quarantine are not over one hundred, and they are of a small class. The existence of the pestilence the last season was very injurious to the business of the place; so much so, that the factories stopped, and nearly all business was suspended. The inhabitants of some portion of the village left their houses and fled for their lives. A large proportion of the inhabitants of Tompkinsville left. I removed myself and family for six weeks, until the disease subsided, and until after a slight frost. Most all in my neighborhood left their residences except those who had sickness in their families and could not leave. My residence was about one-third of a mile from the Quarantine establishment. The schools were all closed, and only one place of public worship remained open. The usual communications between these villages and New York is hourly from about seven A. M. to about seven P. M. in the summer.

After the disease, called the yellow fever, showed itself in the village, the communication between the landings at Tompkinsville, Stapleton and Vanderbilt's landing and New York was interdicted by the Board of Health of New York. The effect of this to those who resided there was to oblige them to go to New York by the way of Clifton or New Brighton; so that in reality it was no interdiction, but only subjected the residents to great inconvenience and increased expense. There were a number of very flourishing boarding-houses there filled with persons from New York, who, on the appearance of the disease in the village, fled at once. There were a great many deaths, and some among my own immediate neighbors. The disease was called yellow fever. I understood there was over thirty deaths from this disorder. The extent of the island is in length about eighteen miles, with an average width of about five miles; soil generally fertile. The population of the island is eighteen thousand or thereabouts (1848.) That part of the island extending from Clifton to Port Richmond comprises about one-fifth of the island, and contains nearly three-fourths of the population. The remaining portion of the island is generally occupied for farm purposes.

There has real inconvenience been occasioned to the inhabitants from the existence of the Quarantine and from the ship fever being prevalent. Some of the inhabitants who have no connection with the Quarantine have sickened and died, supposed from coming in contact with diseased persons going on board the ferry-boats; and I believe it impossible entirely to prevent such contact. The continuance of the Quarantine there will be more injurious, in my opinion, in future than it has been yet; some inhabitants say they will not remain if the Quarantine is not removed.

There is said to be a very offensive effluvia that proceeds from the grounds. It is complained of by the whole neighborhood. Another cause of complaint is, that the ship fever patients in the shanties during warm weather are frequently insane, and annoy those near by with their cries.

Another objection is, that the convalescing patients are frequently annoying to the neighborhood from their indecency and filthiness. The effluvia is notoriously a subject of complaint in the neighborhood of the Quarantine. Under existing laws, officers and employees of the establishment are in general habit of coming in contact with the inhabitants of the surrounding villages; they attend church and places of amusement in common with the inhabitants. In one instance, at a concert in the village, one of the attending physicians was present and sat near to an individual, who, after the usual time had elapsed for infectious diseases to show themselves, was attacked by the smallpox.

DAVID C. COLDEN, being sworn, says: I am one of the Commissioners of Emigration. I have held that position since May 27, 1847—since the organization of the Board. My duties frequently call me to Staten Island and the Quarantine. I am quite familiar with the laws relative to the Quarantine and the general organization of the establishment. From my observation and the opinions of physicians I have conversed with, both at the Quarantine and elsewhere, I should say the present Quarantine establishment does not afford that protection to the city of New York from infectious diseases it should. * * * * *

I think the Quarantine insecure, or, rather, I do not think it affords proper security to New York and the surrounding country, from the difficulty of maintaining a strict Quarantine, which is necessary to accomplish the object; that difficulty arises from the want of means of maintaining a proper police, and the dense population by which the Quarantine grounds are surrounded, and by the present arrangement, which necessarily admits the ingress and egress of a large number of people. I do not believe you could maintain a sufficient police there to enforce a rigid Quarantine, as it would be such a violation of public opinion as would render it impracticable. If it was possible to isolate the Quarantine hospital, (I have reference more particularly to the contagious cases,) from the surrounding population, then I think a strict and rigid Quarantine could be maintained. I think with the present Quarantine this is entirely the reverse. The walls of the establishment are not of sufficient height to keep persons from going in or out, and although we have a night-watch, ingress and egress over the walls cannot be wholly stopped. * * * *

JOHN C. THOMPSON, being sworn, says: I am a resident of Staten Island, and have lived in sight of the present Quarantine establishment all my life. I am engaged in trade there, and am extensively acquainted with the inhabitants in the village of Tompkinsville and with the officers and employees of the Quarantine establishment. There is general intercourse between the inhabitants of the village and the officers and employees of the Quarantine establishment, more particularly in the village of Tompkinsville. Some of the nurses or orderlies reside in the village of Stapleton; and pass my door every day in going to and from their work in the Quarantine establishment. The officers of the institution come out to visit their friends, to trade and attend church and the different societies: in short, a general social intercourse between them and the inhabitants. The physicians of the Quarantine attend patients in the village, and are fre-

quently called on in an emergency. The nurses of the establishment, both male and female, come out to trade, and judging from the action of the male nurses, I should say they frequently came out clandestinely at night, for when they come into my store, they apparently wish to avoid observation. Both male and female nurses frequently come out to procure spirituous liquors. Convalescing patients frequently come into the village by permission, to make purchases and look about: that is, I think they are out by permission, as they do not appear to be under restraint. Some members of the family go out, while others remain in the hospital. They return to the Quarantine at night and are therefore passing and repassing between the Quarantine and the village. I cannot call to mind any cases of that kind the past summer during the prevalence of the yellow fever. The friends of the patients frequently come to the island, but cannot say whether they visit their friends in the Quarantine or not, but presume they do. I think the smallpox was introduced into my father's family by a physician from the Quarantine establishment visiting them, and thence spread over the village, and a good many deaths occurred; one case in my father's family terminated fatally. This was in 1842. Cannot account for its introduction in any other way. Another case occurred last year when a person who had the smallpox supposed he took it from sitting near a physician from the Quarantine in an Odd Fellows' Lodge.

ROBERT M. HAZARD, being sworn, says: I reside at Nautilus Hall, in the village of Tompkinsville, and have resided there about twenty-five years. I have resided within a hundred yards of the Quarantine most of the time.

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All the health officers and custom-house boatmen, and custom-house officers, reside outside the Quarantine walls at Staten Island; they resided outside during the prevalence of the yellow fever the past summer. They would go aboard a yellow fever vessel, and then come into the village, and mix generally with the people the same as usual—all this during the prevalence of the yellow fever. They also visited New York the same as usual, and some of the officers of the Quarantine came up to New York during that period. Some fifty or sixty persons get a living by discharging and lightering vessels with sickness on board, and they went outside the walls and mixed with the people the same as usual. Some of these persons died from yellow fever the past season, taken from vessels.

The health officer has the power to keep persons inside the walls of the Quarantine, but to do so he would require fifty or more houses and a regiment of soldiers. I have seen all of a hundred persons at the Quarantine gate at one time during the past season; in fact, it is a complete thoroughfare. A sign is up on the gate, saying at what time visitors can be admitted to see their friends. The gate-keeper never interferes to prevent persons on Staten Island from going in and out whenever they please. Any one can go in by saying they have business with the health officer or at the barge office. Another objection is its nearness to New York, and the vast number of persons who come to the Quarantine from New York. Sailors are stolen by whole crews from vessels quarantined, by persons who come down from New York for this purpose. I have seen persons come

on the steamboat wharf just as the steamer was about starting for New York, and when the bell was tolling jump on board the ferry-boat, when it was too late to prevent them. Boats came ashore from vessels that are quarantined in many places outside the walls of the Quarantine. This is sometimes done through a mistake, no doubt, but in many cases is intentional. I deem it impossible to keep a strict Quarantine there, from the fact that vessels are continually passing up and down the bay, and at certain times of tide must necessarily pass through the fleet anchored at the Quarantine. The ferry-boat always passes through the fleet, as she is compelled to do, to get to the island, and also from the constant intercourse of the inhabitants with the city of New York. I have known the stench from the Quarantine establishment so great at Nautilus Hall piazza, as to oblige me to go inside the house and close windows and doors. This was when Mr. James kept the house. Frequently the stench comes so strong when the wind is from the Quarantine, that I have been obliged to change my position on the piazza on account of it, and go to the other side of the house. This stench comes from the Quarantine. I have smelt the stench from the drains some three or four days after the privies were let out. I think the Quarantine as it at present exists is a nuisance. The sort of people employed in and about the Quarantine is such that they cannot be prevented from coming to New York when they please. It cannot be anything but a nuisance on Staten Island. * * * *

CATHARINE TOMPKINS, being sworn, says : I have resided on Staten Island, and in the neighborhood of the Quarantine since 1816, with the exception of a few years, and reside there now ; I have heard the testimony of Mr. Thompson and Mr. Hazard, and believe their statements to be correct ; I think I myself, the past spring, (March last,) caught the smallpox, from my familiar intercourse with a person residing within the Quarantine walls ; I presume the recent yellow fever that prevailed on the Island arose from easterly winds blowing the infected atmosphere to the Island ; I frequently felt the stench myself from vessels ; it had a bilge-water smell, and I am confident it came from vessels at anchor under the Quarantine, as I smelt it while on the end of the dock in front of my house ; the carpenters at work in the ferry-house, at the end of the dock, said they smelt it some days previous, and they left their work and the island in consequence ; there were four deaths on this very dock from yellow fever ; of the nine houses in front of my own and nearest the shore, there were seven in which there were cases of yellow fever, and deaths in six ; the residents in the building called " Slamm's Buildings," which were protected from the wind from vessels by unoccupied buildings in front, escaped sickness, although each house was occupied by several families ; the wind was generally northeasterly and easterly, say during a period of eight or ten days. I was in the habit almost daily, after being up with persons sick of yellow fever, of visiting the city of New York, and being there within two hours after leaving the bedside of the sick ; out of the twenty houses nearest my own, twelve were deserted by the families who had occupied them.

During the prevalence of yellow fever, I was in the habit of going into the Quarantine grounds without being questioned by the gate-keeper or

any one else ; the establishment, as it exists, does not answer the purposes of a Quarantine ; any person residing in the village can go in or out of the Quarantine ground when they please ; I doubt whether the Quarantine establishment can be so controlled in its present situation as to be effective as a Quarantine station. * * * I should say decidedly that it is a nuisance to the inhabitants of Staten Island, from the fact that the vessels lying at the anchorage connected with the Quarantine had endangered the health of the inhabitants, and from the fact of the constant intercourse of the officers and employees of the institution with the inhabitants of the village ; it is a nuisance, in subjecting the inhabitants to great inconvenience in their intercourse with New York, and so derogating from their natural rights, and also from the disagreeable effluvia emanating from the grounds of the establishment, * * * I consider it affords New York no protection at all, nor do I think it can be any protection, in that location, against contagious and infectious diseases. * * *

ISAAC SIMONSON, of the county of Richmond, farmer, being duly sworn, doth depose and say : That he was the lessee of the grounds now occupied as a Quarantine establishment, in said county, then forming part of the glebe lands of St. Andrew's Church, at the time they were taken by the State for Quarantine purposes in or about the year 1798 ; that as far as he was then informed, the people of said county were decidedly opposed to the location of said establishment in said county, and said all they could against it ; that they were not aware of the intention to remove the said Quarantine to said county, until a short period previous to the passage of the law by the Legislature to locate said establishment in said county ; and that said lands were taken by and under the authority of said laws, and the value assessed by a jury in the city of New York, convened in pursuance of said law ; that during the first year said Quarantine was located in said county, twenty-three or twenty-five inhabitants of said county sickened with yellow fever, himself among the number, and he was the only one of them who survived * * *

BENJAMIN F. DAWSON, being duly sworn, doth depose and say : I reside in Bleecker street, New York, in the winter, and at New Brighton, Staten Island, in the summer time. I have resided at New Brighton three summers, but only one season at my present residence near the Quarantine. My house is about five or six hundred feet northwest of the north wall of the Quarantine. I deem the present Quarantine establishment decidedly a nuisance to myself and my neighbors, judging from my own experiences and their complaints. I consider it so from the abominable smells from the burning ground, and from the lately erected buildings being too near the wall, so near that we can look into the windows and observe the patients on the piazzas. The smell seems to proceed from the putrid flesh. I cannot describe this smell—it is horrid. My family have been quite sick from the effects of the stench on several occasions, as they believe. The stench was smelt every day in the hot months, about the time the burial trench was opened, and caused great nausea and sickness at the stomach. When the wind was from that direction, the smell was stronger

and we were obliged to keep our windows closed when the wind was from that direction. I have frequently noticed this smell when passing from my house to the Tompkinsville ferry. I have heard of others being made sick by these smells. The nuisance of the shanties was that patients were occasionally on the piazza, and in sight; you could always see the patients in their beds; the chamber vessels were continually in sight. I think I have heard the cries from patients in this hospital, and one case in particular, when the cries were so distressing that I closed my windows. *

ROBERT S. BUCHANAN, being duly sworn, doth depose and say: I am agent for a life insurance company. I reside in New York in the winter, and for the last five summers at Staten Island; and summer before last I built a house a little to the northwest of the Quarantine hospital, and resided there the past season. My house is about three hundred feet from the hospital wall. I heard the affidavit of Mr. Dawson read, and concur with Mr. Dawson in his testimony. I removed there the past season, about the eighth of June, and almost every day the burials were offensive to my family, from the stench arising from the opening of the trench, and my family were often made sick by the stench arising therefrom. The hospital nearest me was not built when I purchased there, nor was it thought of, so far as I know, nor were the ship fever shanties erected. * * * The inmates of my house were made sick, I have no doubt, by the pestilential effluvia arising from the Quarantine establishment, supposed to be from the burial ground. * * * The smell was very disagreeable to those who passed the wall in going to the Tompkinsville ferry. My opinion is that the present location of the Quarantine establishment is not a suitable one, nor does it afford sufficient protection to the city of New York from the constant intercourse between Staten Island and New York.

GEORGE GRISWOLD, being duly sworn, doth depose and say: I am a merchant in the city of New York, and have been engaged thirty-five years in foreign commerce—owning vessels. I do not think the present a suitable location for a Quarantine establishment. So far as the interests of New York are concerned, I deem it no protection to the city. The intercourse is so frequent, the health of the city is not protected. I do not think it possible for a Quarantine, in that place, to protect the health of the city from infectious diseases. From all the information I have been able to get, I think Sandy Hook is the most suitable location. So far as a Quarantine can protect the city, I think that location the best in the United States. I do not think the intercourse between Staten Island and the city of New York can be stopped. I do not think it possible to enforce the Quarantine where it is at present located. I have been down in the Staten Island ferry-boat and seen the sick on board, and seen the dead brought up in the same boat used to convey passengers to and from New York; two cases, they told me, had died of the smallpox. It had that effect on me to induce me to go by the New Brighton ferry. I saw one person put on board the boat who died within ten minutes of that time of ship fever. During the suspension of intercourse the past season, I saw a black man with the smallpox sitting near the boiler on the New Brighton boat, who

was said to have had a permit from the Commissioners of Emigration. He was to go to New Brighton, and from thence round to the hospital, and it created a great excitement among the passengers. This was the three o'clock boat, when it was crowded with passengers returning to their residences on Staten Island. * * * *

JOSEPH W. CHAPMAN, being duly sworn, doth depose and say : I am a pilot, and have been engaged as a pilot eleven years next spring. My occupation previous was coasting and fishing. I have been familiar with the bay and waters of New York thirty years. * * * If it is necessary to have a Quarantine, I do not think it ought to be in its present location, as I deem it, with the great intercourse between it and New York, but very little protection to the city * * *

THOMAS B. VERMILYEA, being duly sworn, doth depose and say : My profession was that of a sailor. I sailed out of the port of New York thirty-five years. I have been for the last five years superintendent of the Seaman's Retreat. Previous to that, I was nine years in the employ of the United States, and passed seven years of that time within the walls of the Quarantine. I am somewhat familiar with the waters of the bay of New York. * * * I do not think the present location of Quarantine a good one on account of the general intercourse between Staten Island and New York. I have known cases of ship fever brought down to the Seaman's Retreat from New York ; I think they must have taken it from the ship and gone to New York, where it might have been disseminated among the people, and then brought down to the Retreat. I do not think the present Quarantine affords much protection to the city of New York, from the too great facility of intercourse. The citizens of Staten Island come in contact every day with the people belonging to the hospitals, and also with passengers from the ships quarantined, and then go to New York, where their business generally is. * * *

GEORGE B. ROLLINS, being duly sworn, doth depose and say : I am an auctioneer in the city of New York. I have owned and navigated a yacht several years. I have been in the habit of navigating New York bay, and also between Massachusetts bay and Cape May, and am familiar with the waters of the bay. * * * I do not think the present situation a suitable one. It might as well be located in the Park for all the protection it affords to the city, on account of the great intercourse existing between Staten Island and New York. * * *

THOMAS W. WILSON, being duly sworn, doth depose and say : I am a ship-master, and have followed the sea for twenty years. I have sailed out of the port of New York, and am well acquainted with the waters in the vicinity of New York. * * * The farther you get a Quarantine from the city the better it is for the purposes of a Quarantine. I do not think the present Quarantine answers the purposes of a Quarantine at all ; for this very morning (Dec. 4) the ferry-boat passed within thirty feet of a

vessel reported as having the smallpox on board, and the wind was blowing directly from the vessel to the ferry-boat. I do not see how the regulation of the present Quarantine can prevent infectious diseases from getting to New York. There is now lying at the Quarantine the packet-ship New York, one of the Havre line, which is reported as having the cholera on board. The captain and some of his crew came up on board the ferry-boat by which I came to New York this morning, and brought some of his things on board. * * * *

ROBERT L. TAYLOR, being duly sworn, doth depose and say : I am of the firm of Taylor & Merrill, of this city, shipping merchants. We have been established as merchants for twelve years, and I have been a ship-master and merchant for the last thirty years. . . . I should judge, from what I see, that it is almost impossible to prevent communication between the people of New York and the people in and around the Quarantine establishment. I deem an insulated place a more proper place for a Quarantine than a thickly settled one. * * * *

FRANCIS S. JONES, being duly sworn, doth depose and say : I reside in Tompkinsville, Staten Island, and am a hotel-keeper. I keep Nautilus Hall. The principal part of my business is entertaining transient persons. I take a few boarders. I have been in business there nine years. The Quarantine operates very injuriously to my business, particularly for the last two or three years. I judge so by my receipts. They have fallen off fifty per cent. the past summer. Indeed, I had almost come to the conclusion to close up last August, when I was taken sick with the yellow fever, as it was pronounced by the physicians who attended me. The physicians who called were Doctors Smith, Whiting, Van Dyke and Harcourt. Dr. Smith was my family physician. My daughter was also sick with the same disease, but worse than myself. At the time, I had four or five regular boarders, who, upon my being taken sick, immediately left, and did not again return. I entirely secluded myself from the Quarantine. I did not at any time enter the Quarantine walls ; but there were other cases in my neighborhood. I did not visit those persons who were sick while they were sick, although they were tenants of mine. I consider the Quarantine a nuisance, from the stench that proceeds from there. Indeed, so great is the stench that I often have been obliged to leave the part of the piazza next the Quarantine, and go to another place. This occurs only in the summer, and I consider it to proceed from the privies. This nuisance I have heard mentioned by many persons. Should the Quarantine be removed, my opinion is that it would benefit all persons who keep public houses and boarding-houses. We depend for our support on transient persons from the city of New York, and also those who board there during the summer season. I have noticed the rag-pickers, frequently, in their scows, approach beds that were thrown overboard from vessels, before they came ashore rip them open, empty their contents, and put the ticks in their boats. These beds are thrown overboard from the ships before the vessels are fumigated. They wash them out and bring them up in the passenger boat to New York, and sell them. This morn-

ing (December 20) there was a cartload came up on the same ferry-boat that I was in to New York. I know the ship New York very well. She did lay, during the time she was detained at the Quarantine, about half a mile from the shore and about abreast of the lower part of my yard—say about abreast of the centre of Tompkinsville and south of the steamboat landing. She was nigher the village by nearly a quarter of a mile, I should judge, than the public stores. In 1847, my business was injured, as well as in 1848. The falling off in 1847 I attributed to the ship fever being prevalent. Some few had the ship fever in the village in 1847, but not so many as had the yellow fever the last season. The principal business, many years ago, of boarding-houses was for the entertainment of passengers quarantined, but this has not been the case lately. I have never known the rag-pickers to contract any disease from their rags. I suppose Mr. Exer, one of the first victims to the yellow fever, took the disease from rags purchased from these persons, but do not know. I do not know that any one contracted the disease from these rags on board the ferry-boat, or elsewhere. I know some of the hands of the ferry-boat had the yellow fever, and also the toll-collector at the ferry, who died. All tavern-keepers and boarding houskeepers suffered by the prevalence of the yellow fever last season. I was informed that Mr. Blanchard lost one hundred boarders in one day. Mr. Denyse, who kept the Pavillion on the hill, near Tompkinsville, was obliged to close his house in consequence, and did not re-open it again during the season. * * * * *

JAMES HART, being duly sworn, doth depose and say : I am superintendent of the Seamen's Retreat. My occupation is that of a mariner. I have been master of a vessel for thirty-six years. I always sailed out of the port of New York with the exception of about eighteen months. * From the manner in which the Quarantine has been conducted for the last twenty-five years, I think it has not been so protective to the city as it ought to be, and has been growing less and less protective for ten years past. I have several times been detained at the Quarantine while my vessel was being purified and my clothes washed, and while thus detained have had my family there and then came up to the city. In thus speaking of the Quarantine, I have no design of reflecting on any officers of the establishment, for I have no doubt they acted according to the law. I think from the locality of the place, and the constant intercourse between the inhabitants of Staten Island and New York, which I do not think can be stopped, that the present Quarantine affords little or no protection to the city of New York. The only effect in prohibiting the intercourse between any portion of Staten Island and the city of New York will be to drive the inhabitants to go by way of other places on the Island where the intercourse was not prohibited, and thus subject them to more inconvenience and expense.

<p>THE PEOPLE,</p> <p><i>vs.</i></p> <p>RAY TOMPKINS and JOHN C. THOMPSON.</p>	}
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On the 14th day of September, 1858, the Attorney-General, at the request of the Governor, came to Staten Island, and co-operating with the District-Attorney of the county, instituted criminal proceedings against the above parties, before Hon. HENRY B. METCALFE, County Judge, for arson, in the destruction of the Quarantine buildings on the nights of the 1st and 2d of September. The complaint was made by Doctor BISSELL, physician of the Marine Hospital, and the parties were arrested on warrants. A protracted and thorough examination of the whole matter was gone into, the people being represented by Hon. LYMAN TREMAINE, Attorney-General, Hon. R. W. PECKHAM, associate, and ALFRED DE GROOT, Esq., District-Attorney; and the prisoners defended by Hon. GILBERT DEAN and WILLIAM H. ANTHON, Esq. The officials of the county rendered the prosecution all the aid in their power. The investigation was continued, with occasional adjournments, until the 7th of October, when the testimony was summed up and the cause submitted. After due deliberation, the following decision was delivered:

Opinion of Judge Metcalfe.

On the nights of the first and second September last, the Quarantine buildings of the port of New York, situate at Tompkinsville, were consumed by fire, which human agency intentionally communicated.

The prisoners are charged with the act, and are arraigned for arson. Without actually confessing, but, certainly, without very strenuously denying any agency, they allege, that the Quarantine, as it was, and had for a long time been conducted, was a public nuisance, dangerous to the health, and, in many cases, fatal to the lives of the community where it stood; and that, therefore, the acts complained of were done in obedience to

a great public necessity, by which the actors are exonerated from all blame.

The statute under which this examination is conducted, makes it the duty of the magistrate, if he shall be of opinion that a crime had been perpetrated, and that there is probable cause to believe the prisoners guilty of it, to commit them.

On the testimony, there can be no difficulty in believing that the prisoners were *probably* either principals or accessories; and the only question remaining is, whether those transactions constitute a crime.

The arson is charged to have been committed on buildings. But it could not be arson in the *first* degree, because, though some of them were inhabited dwelling-houses, and although they were burned in the night-time, yet the proof fails to show that there was in them at the time, any human being. Nor do I see any reason for supposing the property to be that which is made the subject of arson in the second degree. The statute which seems to cover the present case, is that which enacts "that every person who shall *wilfully* set fire to or burn in the night-time the *house* of another not the subject of arson in the first or second degree; * * * any public buildings belonging to the *people of this State*, or to any county, city, town or village, * * * shall, upon conviction, be adjudged guilty of arson in the third degree." (2 R. S. 667, § 4.)

The property in question seems to have belonged to the Commissioners of Emigration, but whether in their own right, or in trust for the State or the city of New York, is not quite clear, nor is it material to enquire, for the people have extended the same protection over the property of individuals and corporations as over their own. Nor is there any mention of hospitals as such. They are protected only, as they fall within the general words of the statute, and it is arson to burn them only when it would be arson to burn any other building which the same words embrace.

And this is whenever the act is *wilfully* done. I have always said it was done *intentionally*; but *wilfulness* implies malice, and malice is inferred from the intention, unless it be disproved.

Has this disproof been furnished? I think it has.

The grounds of the Marine Hospital lie at Tompkinsville, and are bounded on the west and south by public highways, the opposite sides of which are closely occupied by dwellings, and that on the south terminates at the wharf used by the New York ferry, and is often, particularly on the arrival and departure of the boats, thickly crowded with passengers. To the north, and immediately adjacent to the grounds, lies New Brighton. On the south of Tompkinsville is Stapleton, with Clifton beyond. These four villages (or rather one large village, with four names) are a long, narrow, thickly-peopled belt, extending along the whole eastern shore of Staten Island, and folding around the corners to the north and south, and containing, probably, not far from three or four thousand inhabitants, but unincorporated. Tompkinsville and New Brighton are in the town of Castleton.

The Marine Hospital, and, of course, its grounds and the port—although the former lies wholly in the county of Richmond, and the latter partly in that and partly in the county of Kings—are subject, for quarantine purposes, to “The act relative to public health in the city of New York” (S. L. 1850, 597–615), and to the subsequent acts by which it may have been amended; and all infractions of these laws are triable exclusively (so the statute says) in the Courts of General and Special Sessions of that city. They are, therefore, under the jurisdiction of the health officers of the port, the physician of the Marine Hospital, and the Board of Health of the city. The residue of this county—that is, so much of it as is not within these grounds, and forms no part of the port—are under a totally different code: “The Act for the Preservation of the Public Health,” (S. L. 1850, 690–693,) which, however, was passed and went into operation on the same day as the act relative to the public health in the city of New York. It is unnecessary to add that these statutes are of equal validity, and confer on all who act under them equal authority. The grounds of the Marine Hospital front on the upper bay, communicate by water with the whole port and the city, and by land with the town of Castleton and the villages which occupy its eastern margin.

It is the evident intention of the health laws of the city—an

intention which has been carried into effect with considerable fidelity—that on these grounds should be concentrated everything, whether living or dead, which is taken from infected vessels, and neither destroyed nor fit to be conveyed into healthy communities. Here infected baggage is landed and opened to the air; here infected vessels discharge and frequently deposit their infected cargoes—sometimes as many as three being at the same time and same wharf unloading; here infected clothing is washed; here the passengers, and, I suppose, also the crews of the infected vessels, serve out the probation which is to determine whether the seeds of disease shall germinate in sickness or death, or fail to germinate; here are gathered or huddled all who have sickened of pestilential diseases, whether in the city or on shipboard, to be cured or to die; here, finally, all who perished on shipboard of the plague or of diseases in the nature of the plague, and not thrown over at sea, are brought for burial.

The extent of these accumulations on these grounds is not shown by direct proof; but in 1856 there were *one hundred and fifty vessels* at one time in Quarantine for infectious diseases. The aggregate is not stated. From this may be formed some idea, however inadequate, of the quantity of infected clothing, of infected cargoes, the number of infected sailors and passengers, of the sick and the dead, the present year, when, as Dr. Thompson, the health officer of the port, testifies the influx of yellow fever vessels was thirty-three per cent. greater.

The number of persons whose services this immense establishment rendered necessary, is also not directly shown; but it must have been large. The health officer and his family, the boarding officer of the port and his family, the deputy health officer, the physicians having charge of the various hospitals, resided on the grounds, which do not exceed in extent some twenty-five or twenty-eight acres. Then, there were the persons connected with the wash-house; there were nurses; there were persons of unexplained duties, called orderlies. Then, there were the boatmen or bargemen, whose duty was to row among the vessels at Quarantine, to bring off baggage, crews, passengers, the sick and dead—to fumigate infected vessels—to “go into the worst parts of the ships, the houses on deck, the

forecastles, and take out the pump-boxes." Then, there were the persons who gathered up the infected matter, too dangerous to be thrown overboard, unfit to be taken even to the Quarantine grounds—beds, bedding, old clothes, straw, rags, and whatever else infection could nestle in best. This was accumulated on the iron scow and burnt. The quantity can be judged of from the fact that the smoke was wafted from the distance of several hundred yards upon the shores, drove people of the neighborhood from their piazzas, and entered the houses. Of any of these several classes the numbers are not given; but of stevedores, Van Buskirk (one of them) says there were 130. The business of these was to discharge infected cargoes. In all, I think it safe to say, there must have been, at least, from 250 to 300 persons employed at Quarantine, in the most infectious of all places and of all employments, spending their days and nights, whether on land or water, in barges or in ships, in an atmosphere reeking with infection.

That these persons were engaged in occupations most dangerous, was their concern, and not that of the prisoners or of the public. That their duties were necessary, and that some of them sickened or died in the performance of them, is to be lamented. But there were circumstances connected with their performance of those duties, in which the prisoners and the public had a deep interest. Their occupations were not only dangerous to themselves, but might be to others also. It was asserted by several medical witnesses and questioned by none, that the clothes of exposed persons may, though they escape themselves, communicate the disease to others. It was, therefore, of the highest public concern, that so many persons within the Quarantine grounds, whose garments might carry infection, should be kept there. (*The King v. Vantandillo*, 4 M. & S., 73.) All experience, as well as all the evidence, shows that nothing is so fatal as articles from infected shipping. These, of every species, were heaped up in those grounds; and it was of the highest public concern that there they should remain. Dr. Bissell accounts for some of the fatality outside of the walls by the sale there of the garments of persons who had died of yellow fever within. Can the public have any greater concern than that such fatality by such means should be prevented?

They whose occupations, without extraordinary care, are dangerous to the community, owe that community extraordinary care. Nothing short of it will excuse. It is obvious that in an establishment like the Marine Hospital nothing short of absolute isolation from the surrounding population can give any adequate security. Nor was there any practical impossibility. All the infected matter and infected men might enter those grounds without leaving the jurisdiction of the health laws of the city, which, as has been shown, extend for all quarantine purposes over the whole port. The evidence shows that there was in the employ of that establishment, not only barges and bargemen, but also a steamboat, sometime used for towing vessels, sometimes for carrying up passengers, and sometimes to take the health officers on excursions of pleasure. And the imports of the establishment, as well as its exports, were thus under its own control. As the passengers and sailors had entered the grounds by water, so they might depart by water, both in conveyances furnished for the purpose. No doubt it would be more expensive or inconvenient. But no man will, in terms, assert a right to endanger human life to save expense, or to prevent inconvenience. So, too, in regard to the inmates. If their garments could carry infection—if any dishonest man among them might purloin and bear away any article, the touch of which might be death—then obviously public duty—private duty, the commonest humanity, forbid that those persons should be allowed to go aboard. No doubt such restraints would make those employments more irksome, and render necessary an advance of wages or of salary. But are wages to be weighed against a pestilence? Then in regard to persons from without. There will be found in every village those whom interest or curiosity, or mere foolhardiness, will lead into such places of exposure. The admission of these to Quarantine grounds must endanger not only their lives, but also those of many others, by the infection that might be borne away. For the admittance of such, there is not even the miserable excuse of expense saved, or inconvenience avoided. These principles are so obvious as to be almost truisms.

The health laws of New York contain the most abundant enactments to sustain them. Thus every person who shall elope

from Quarantine, or who shall enter the Quarantine grounds, without permission, or who shall *neglect or refuse to comply with the directions and regulations which any of the officers of health may prescribe*, are guilty of misdemeanors. Thus the mere direction of the officers of health are *laws*, and their violation crimes. The written command of such officers to "any citizen" to arrest any such offenders, is obligatory, and disobedience to *that* is a misdemeanor also. Every power which the most unexpected exigency of duty may require is thus conferred; and no person may pass the Quarantine grounds outward or inward, without permission, and complete isolation from the surrounding population would be established. And it is an obvious principle that powers conferred for the protection of the public health become *duties*. (*The People vs. The Corporation of Albany*, 11 *Wend.*, 539.)

But besides the general duties to exercise such powers for the isolation of the Quarantine, there was on the very day on which the statute by which they were conferred was passed, enacted another statute, under which it became the "*duty*" of the Castleton Board of Health, "*to regulate and prohibit or prevent all communication or intercourse by and with all houses, tenements and places, and the persons occupying the same, in which there shall be any person exposed to any infectious or contagious disease*, (S. L. 1850, 693, § 3, subdv. 4.) Thus within those walls one code, and on the outside of them another code, were in operation—both in the most explicit terms, and by the most necessary implications, imposing the duty of complete isolation. The omission of these duties was a misdemeanor. (*The People vs. The Corporation of Albany*, above cited.) To violate the regulations thus commanded to be adopted by the Castleton Board was made a crime, also punishable by fine, not exceeding one thousand dollars, or by imprisonment not exceeding two years, or both. (S. L. 1850, p. 692, § 4.)

The influx of yellow fever vessels had commenced as early as in April last, and had continued, so far as the case shows, without interruption. Infected vessels were accumulating in the port—infected persons and property at the Marine Hospital. The *casus* contemplated by the act certainly existed. All the physicians, orderlies, nurses, persons connected with the watch-

house, boarding officers of the revenue, bargemen and stevedores, had been "exposed" to yellow fever, among the most, if not the most, contagious of diseases. All the yellow fever patients in the "houses and tenements" had contracted the malady, and all these were in the Hospital grounds. The Castleton Board of Health had, therefore, no alternative but to violate the statute or act under it. They chose the latter, and on the 13th of July last, at a full meeting composed of the Supervisors and the four Justices of the town, adopted a series of regulations of which the 5th and 6th, together with the declaratory clause, were as follows: "The Board of Health of Castleton adopted the following rules for preserving the health of the town:" Sec. 5th. No person shall pass from within the Quarantine enclosure into any other part of said town, nor upon the said ferry-boats, nor shall any baggage, luggage, freight or other articles be brought from within said enclosure to any other part of said town, or carried upon said ferry-boats within said town. Sec. 6th. Neither the Health Officer, Deputy, or acting Deputy Health Officer, Physician of the Marine Hospitals, nor any person in their or either of their employment within the Quarantine enclosure, or in visiting infectious or quarantined vessels, nor the United States Boarding Officer, shall come into any part of said town, outside of said enclosure; and no person going into such enclosure shall be allowed to come out until the further action of this board; nor shall there be any communication or intercourse with such enclosure without the written permission of the Health Officer of the said town, stating that in his opinion it will not endanger the public health so to do. Nothing contained in any of the foregoing rules and regulations shall be so construed as to prevent the Health Officer of the Port, his deputies, or any of the State or Federal officials or employees of the Quarantine from having free and uninterrupted ingress to or egress from the Quarantine enclosure over the waters of the Bay, within the limits of the town of Castleton." Copies were served on Dr. Thompson, the Health Officer of the port, and on Dr. Bissell, the Physician of the Marine Hospital. No objection to the legal validity of these regulations has been suggested, nor have I been able to discover any. No discretion was left to any persons having knowledge of their existence but to al-

stain from their infraction. Yet Dr. Munday, the Health Officer of Castleton, testified that no attention was paid to them. Dr. Thompson swears: "I disregarded them." It is difficult to account for the absence of precaution to prevent the spread of the infection by means of the intercourse between the inmates and the public around, except on the proverbial indifference to human life, exhibited by those whose own lives are in constant danger.

There is no evidence showing that admittance was ever in one single instance, before the fire, refused to persons from without. There is, however, proof that verbal or written passes were given to the inmates to go out, but no proof how frequently, or for what causes, or under what precautions these passes were granted or withheld, nor that such a pass was any safeguard against infection. It is certain, however, that the bargemen who visited and fumigated infected vessels, gathered up and burned, on the iron scow, infected materials, and brought away the sick and dead, had *general passes to go whenever and wherever they pleased*. In fact, although most of them lived within the Hospital enclosure, their dwellings were so constructed that they "had to pass" into and along the public highway many rods to enter them. And it is equally certain that as to the stevedores, whose business it was to unload infected cargoes, whether passes were granted to them or refused, it was all the same. For one of them, sworn for the prosecution, says: "We can steal a boat whenever we want it; sometimes our boss stevedore leaves a boat unlocked; sometimes we would get a pass from Dr. Thompson, Dr. Waller, or Dr. Walser; sometimes we could not, and then we would get out by a boat, if we wanted to go badly." He got out once a week, sometimes oftener, but never more than three times a week, and then he generally went to his family at Port Richmond, a village three or four miles distant. All the persons living on the ground received visits from their friends except the patients, and returned their visits. David McLyman, superintendent of the iron scow, another witness for the prosecution, testified: "Generally, I spent my evenings, when I wished, about the village or at home; was at the convention at the New Brighton Assembly Rooms; *about fifteen or twenty stevedores went with me.*" Dr. Westervelt, a resident of the

neighborhood, and sworn for the prisoners, says : " I have frequently seen them (the employees) outside of the walls, in the street, or the ferry-boats, and in the streets."

Dr. Thompson himself testifies : " That several of the barge-men went to a convention at Richmond six or seven miles off, with his permission, in August, and when yellow fever was in the hospital. Sometime before that, he attended a large assemblage at New Brighton, when there were about thirty stevedores and others—employees at Quarantine—some of whom went with his permission ; yellow fever being then in the hospitals, and infected vessels being discharged in their turn at the dock." He says : "*It was a misdemeanor for parties putting themselves in Quarantine to go out. So understood it at the time of the political meetings. Letting the stevedores and others go there was in opposition of the known wishes of the Board of Health of Castleton.*" The walls, he says, were so low, that they were easily scaled, and even at the gates persons could get over who desired it. There was no police to keep in the stevedores. Other witnesses furnish further details, and all coming to the same result, that, practically, the intercourse between the inside and the outside of the grounds was unrestrained. This state of things, besides tending to the spread of infection by means of clothing, facilitated a traffic in infected commodities, and accounts for the sale in the village of the effects of persons dying of yellow fever in the hospitals.

But the Castleton Board of Health were none too quick in their precautions. On the 15th of July, two days after the adoption of their regulations, Kramer, the deputy on the iron scow, who lived in the village, only a few rods from the hospital, sickened and died at his house where his wife died—then Mrs. Keil died—then Mr. Henderson died ; thirteen others sickened and three of them died, all of yellow fever in the same locality. It is impossible, I think, to doubt that at least this mortality is attributable to the intercourse with the hospital grounds. For if Kramer had been strictly quarantined, as he should have been, this mortality would have been avoided. Meanwhile, the disease appeared in New Brighton, where occurred four cases and two deaths—a case or two elsewhere. The season of the year was at hand when the terrible malady is known to be most malignant. Besides, in 1848, there had been nearly two hundred cases along

the eastern shore of the island ; in 1856, about forty cases, and on the other side of the Narrows one hundred and eighty cases in a population hardly exceeding five or six times that number, proportionable to nearly a hundred thousand cases in the city of New York. And now it had broken forth again ; and with the increased influx of yellow fever vessels, what was to prevent an equal or a greater mortality ? If this was not a case of *great danger*, it is, I think, difficult to say what danger is great ; for it threatened a whole community, no member of which could say that his life was safe. If this was not a case of *imminent danger*, I think it difficult to say what danger is imminent, for no member of that community could say that he might not be the next victim the next hour. From the place to which all the *malaria* of our commerce had converged as to a focus, it was in violation of duty and of law allowed to radiate again as from a centre through gates, over walls, and stealthily in the darkness of night along the waters. This is the very idea of a nuisance, and of all nuisances the most terrible—not because contagious and infectious diseases were there concentrated, but because not only were no adequate precautions taken to keep them there, but many of the likeliest means for their diffusion were employed, and many more were not prevented. Had these buildings been private property, like the tenement houses in Albany, (*Van Wormer vs. The Mayor of Albany*, 15 Wend., 262 ; *Meeker vs. Van Rensselaer*, 15 Wend., 397,) there can be no doubt I think, it would have been lawful not only, but meritorious to destroy them as those were destroyed. But this was public property, or property in the nature of public. In the first place, if the act were not malicious, the statute of arson does not apply, whether the property were public or private. In the next place, no law makes public property more sacred than private. On the contrary, all the constitutional guarantees are thrown around private and not public property, not only because the individual being the weaker party is less able to protect himself, but because the loss of property to the individual may be irreparable, while to the State a similar loss would hardly be felt. When, therefore, the courts adopt the principle that in obedience to the maxim, that the public safety is the supreme law—*Salus populi suprema lex*—private buildings

may be torn down, as in the cholera season at Albany, or blown up, as at the great fire in New York—they lay the foundation for an *a fortiori* argument that *public* buildings may be torn down or blown up for the safety of the public. Strange, indeed, would be the doctrine that the destruction of private property, when done under the remorseless goad of a great public necessity, like staying a plague or a conflagration, would be not blameable but rather praiseworthy. Yet the destruction of public property under the same circumstances, becomes a crime. Indeed, the reasoning of the courts show that the principle which permits the destruction of private property would, *a fortiori*, permit the destruction of public property. Thus, in the case of *Russell vs. The Mayor and Corporation of New York*, 2 Denio, 461, Porter, senator, says, “The preservation of the life of a citizen is *a matter of public interest*, and the taking away of another’s life, under some circumstances, and the destruction of private property, probably under any circumstances, would be justifiable *when the saving of life is in question*, in a case of absolute necessity. The taking, in such case, may be said to be for the public. So the public have a great interest in arresting the *devastation* of a fire or *plague*, or any other great calamity; and although the immediate sufferers are, in the first instance, a few individuals, yet the means to be employed for arresting the evil are for the public use.” Is that the kind of reasoning which would carry the person who destroyed public property, under the same circumstances, to the gallows, rather than to applause for having done well? In the same case, Senator Sherman says, truly, “The best elementary writers lay down the principle, and adjudications upon adjudications have for centuries sustained, sanctioned, and upheld it, that in a case of actual necessity, to prevent the spreading of a fire, *the ravages of a pestilence*, or any other great public calamity, the private property of any individual may be lawfully destroyed for the relief, protection, or safety *of the many*, without subjecting the actors to personal responsibility for the damages which the owner may have sustained.” Would any man be likely to infer from such language, that if the *people* had been suing for the destruction of *their* property for the

protection or safety of the *many*, they would have succeeded better than Mr. Russell ?

In the case of *Stone vs. The Mayor of New York*, 25 Wend., 157, the same questions arose, and in the discussion, the same principle of necessity is stated, though founded on slightly different grounds. Senator Verplanck, (and it will increase the interest, though it will not certainly detract from the authority of his opinions, when it is remembered that he is the venerable President of the Commissioners of Emigration, in whom the title of the property now in question is vested,) says, "There is also another case where the rights of individuals may be justly sacrificed to the rights of others. * * * This may be seen in cases of imminent peril, when the right of *self-defence, of the protection of life, or of property*, authorizes the sacrifice of other and less valuable property. This is a natural right, arising from inevitable and pressing necessity, when of *two immediate evils*, one must be chosen, and the less is generally inflicted in order to avoid the greater. Under such circumstances, the general and *natural laws of civilized nations*, recognised and ratified by the *express decisions* of our common law, authorizes the destruction of *property* by *any* citizen, without his being subject to any right of recovery against him by the owners. The agent in such destruction, whether in protection of his own rights or of those of others which may be accidentally under his safeguard, acts from good motives and for a justifiable end ; *so that from him the sufferer has no rightful claim.* * * * Thus, those who, whether magistrates or private citizens, *under the pressure of inevitable danger, and to prevent a greater calamity*, find themselves compelled to *destroy the effects of others*, are not and ought not to be adjudged trespassers. * * * The necessity of the case compels the destruction of some property to save more ; those who commit this act of *salutary and well-intentioned violence* are exempt from responsibility upon every ground of justice and of positive law."

From such reasoning, can human ingenuity draw the doctrine, that he who, from the same good motive and justifiable end, does the same *salutary and well-intentioned violence* upon the property of the State, instead of that of individuals, is *held to his*

responsibility by every principle of justice and positive law? But it is unnecessary to pursue the discussion further, although the same doctrines as those just cited will be found in the other fire cases in 17th, 18th and 20th of Wendell. The doctrine of guilt for destroying the property of the public, when, if the property were private, the act would be blameless, has no color in the statute, in the common law, the constitution, or in sound reason, but is refuted by them all.

The emergency then authorized the destruction of the property in question, even if it belonged to the State. Was it done in such a manner as will justify the inference of malice, although done for good motives and for a justifiable end? The inmates were all suffered to escape, except the patients, who were unable to do so. These were carried to a place of safety, treated with care; and although all recovered except one, who, as Dr. Bissell testified, would in his opinion have died the same day without the burning, there is no complaint from *them*. There is no proof of any disguise used or violence threatened by any of the assailants. To have employed the same means of destruction as was employed in Albany, would have been not only a waste of time, but would have exposed the parties to all the infection which it was their purpose to avoid. To have employed gunpowder, as was done at the great fire in New York, would have occasioned more danger, and could in no respect have been as effectual as fire in expelling at once and forever the contagion. As to its being in the night-time, it need only be remarked that the law imposes no obligation of doing such an act of "salutary and well-intentioned violence" in the day-time, when it is remembered that the Board of Health of New York are its Mayor and Commonalty, who, even if they disapproved of the conduct and recklessness, which left no alternative, might yet with all the force of a large armed police have resisted the just consequence.

For these reasons, I am of opinion that no crime has been committed; that the act, the necessity of which all must deplore, was yet a necessity not caused by any act or omission of those upon whom it was imposed; and that this summary deed of self-protection justified by that necessity, and therefore by law,

was resorted to only after every other proper resource was exhausted.

II. There is also another ground of justification. On the first day of September, the Board of Health of Castleton adjudged the Quarantine buildings to be a nuisance, and called on the people of Castleton and the county to abate that nuisance without delay. The power to render such a judgment is contained in the powers and duty of making "regulations in their discretion concerning the suppression and removal of nuisances, and such other regulations as they shall think proper and necessary for the public health." (S. L. 1850, 693, § 3.) This was in its nature a judicial act; the Board had jurisdiction of the subject matters by the terms of the statute, and their judgment was conclusive. The acts complained of were done in obedience to this judgment. On the common principle, therefore, that a person acting under a judgment of a tribunal having jurisdiction over the subject matter will be protected, the prisoners must be held not guilty. In *Van Wormer vs. The Mayor, &c., of Albany*, 15 Wend., 262, it was held in an action of trespass for carrying into effect a similar decree, founded on exactly the same language of the act that it could not be shown in opposition either that the alleged nuisance did not exist, or that the owner of the property had no opportunity to be heard before the Board, but that the judgment was conclusive as against the collateral review, and was a protection to the defendants. (See also 2 Denio, 476.)

III. There is yet another ground on which the prisoners should be discharged. On the testimony, there is, I think, no doubt that the Quarantine establishment situated where it was, must always be a nuisance of the most aggravated character.

That the establishment, including hospital and anchorage grounds, was dangerous to the public health—that it has caused in several years the most deplorable loss of life on the adjacent shores of Long and Staten Islands, was not disputed. A few extracts from the testimony of the medical witnesses will show that it was beyond dispute. Thus Dr. Thompson, the present health officer, says: "I do not consider the Quarantine a proper quarantine, as at present constituted; have always been in favor of removal; objections are, that it is too near the two islands and the city; the great danger is with vessels and cargo;

so many vessels as laid there in 1856, and at present, *cannot* lie there with safety to New York, and in particular to this and Long Island. * * * * The grounds for the Marine Hospital are none too large, but, with buildings properly arranged, *might* be large enough; the anchorage is quite too small. * * * * As Quarantine is now

constituted, the increase of commerce increases the danger; in 1856, received a greater influx of yellow fever patients and vessels *by 75 per cent. than before.* * * * In 1858, the influx of yellow fever vessels *has been 33 $\frac{1}{3}$ per cent. over that of the year 1856.* * * * I should anchor the vessels outside of the Narrows; I should think it would be well to have all go below—sick, vessels, and cargoes.”

Dr. Waller, the assistant physician of the Marine Hospital, after stating that in 1856 there were sixteen or eighteen cases of yellow fever among the employecs of the hospital, and some twenty-seven cases outside, says: “Were as many as 150 vessels at that time anchored off the shore; yellow fever was first on Long Island that summer; extended from Fort Hamilton to Yellow Hook; WAS IN EVERY HOUSE ALONG THE SHORE; some cases in Brooklyn; WERE SOME 180 CASES AND ABOUT 80 DEATHS; I visited almost every house and patient; Quarantine, situated as it is and as the vessels are, if they are kept here any length of time, it is probable that either Long Island or Staten Island shore will suffer from yellow fever.”

In answer to a question put by the counsel for the prosecution, he says: “The immediate grounds have not been sufficient for purposes of Quarantine; the defect is want of large storehouses for reception of goods from infected vessels, to prevent danger to those who live in the immediate neighborhood of storehouses; there is less danger to New York than *to the inhabitants of Long and Staten Islands.*” To another question from the same quarter, he says: “I answer, though reluctantly, that the grounds are not sufficient to form a proper quarantine.”

Dr. Harris, who was the physician of the Marine Hospital in 1855 and 1856, says: “I consider that the Quarantine anchorage ground is *most favorably located for the ready diffusion of the infection of yellow fever* to the populous regions adjacent to the waters of the port and vicinity of New York. To accomplish

a successful isolation of the Quarantine landings, hospitals, wash-houses, offices, &c., so as not to endanger the surrounding villages and country, would be very difficult, if not impracticable; but principally is such an establishment objectionable in a populous community like this, from the fact that the yellow fever, when once it infests a locality, however limited in extent, is liable to be reproduced and spread indefinitely."

Dr. Anderson, who was resident physician of the Seaman's Retreat in 1848, says: "Yellow fever prevailed that summer *to the extent of 180 cases*. It extended from north of Quarantine walls to Vanderbilt's landing. All classes of persons took the yellow fever that year—male and female, old and young—no class was exempt. In 1856 there were about 53 reported cases. This year there were about 30 cases before the 3d of September. *It is impossible for human sagacity so to isolate the present Quarantine establishment as to make the shores of Richmond, New York, and Kings safe from infection.*"

Dr. Westervelt, who was assistant health officer from 1823 to 1828, and health officer from 1829 to 1836, says: "It is impossible, in my opinion, to isolate the Quarantine in its present location, so as to insure the safety of Richmond county, Kings county and New York. If isolation is the distance between the infected point and the population necessary to prevent infection, then the isolation CANNOT be accomplished."

Dr. Mundy, the present health officer of the town of Castle-ton, after detailing the cases of yellow fever of the present year, says: "I am familiar with the Quarantine location. In my opinion, it is impossible so to isolate that Quarantine establishment as to insure the safety of Richmond, Kings and New York counties."

Dr. Harrison, who was deputy health officer from 1811 to 1813, and from 1815 to 1823, and health officer from that period to 1829, says: "I think the present Quarantine establishment by no means affords the security now that it once did to the health of Richmond and Kings counties and New York. The first reason is, that the population has greatly increased since 1829. Another reason is, that the communications with the city are much more free and open now than at that time; and another reason is, that the commerce of the port and ves-

sels arriving from tropical latitudes have greatly increased, and that the danger of communicating the fever to the shores of Staten Island, as well as Long Island and New York, has greatly increased."

Dr. Harcourt, who was at one time deputy health officer, and has held many positions at Quarantine during the last thirty years, says: The present Quarantine, as now located, cannot be so isolated as to insure Richmond and Kings counties and New York against pestilential diseases."

The same opinion was expressed by Dr. Lea, a physician of eighteen years' practice, and the health officer of Castleton in 1856.

Dr. Horwitz, who was temporary deputy health officer during the yellow fever here in 1856, and had visited other Quarantines, says: "So far as the health of New York, Kings and Richmond counties was concerned, the Quarantine establishment was decidedly a farce at that time, because it was not isolated enough."

These are the only physicians examined on the subject, except Dr. Bissel, the present physician of the Marine Hospital, whose practical acquaintance with yellow fever began about one year ago. He, however, says: "The Quarantine, in my opinion, *is* sufficiently isolated to render it safe for the county of Richmond and city of New York, as regards infectious and contagious diseases, *provided the laws of Quarantine are enforced.*" But as Dr. Bissel denies neither the yellow fever of 1848, 1856, nor the present year, they must be attributable, in his opinion, to some known or unknown violations of the law of Quarantine, which human ingenuity cannot prevent; "Because," he adds, in concluding his first examination, "I do think that if the Quarantine was located on the BATTERY, it would be safe for the city of New York, if they would allow ME to make the regulations and to rigidly enforce them."

Thus eleven physicians were examined on the question, whether that establishment could be so conducted as to be safe to the people on the adjoining shores of Staten Island and Long Island; they had all been either connected with it or lived in the neighborhood, and had seen there the nature and operations of yellow fever. Ten of them, including two former and the

present health officer of the port, were emphatic that it *could not* be safe to those people, and one only thought it could if the laws of Quarantine were strictly enforced. This testimony was strongly corroborated by the fact that it had always appeared on the outside of the Quarantine walls whenever it existed to any extent within; that in the years 1848 and 1856 there were upwards of four hundred cases and about one hundred and seventy-five deaths; and that on the first of September, and for some time previous, the infection was on the anchorage ground and in the hospitals in great quantities, and had broken out with violence among the people, and that the danger to public health was great and imminent; and that this danger and all the cases that had occurred were, and all that might occur must be, the certain and inevitable effect of the statute placing the establishment in that locality. Those statutes did, therefore, "deprive" many men, and threatened and would inevitably "deprive" many more men of their lives without due course of law, and were wholly inoperative to take away from the people of Castleton, and, among them, from the prisoners, the common right to destroy property which endangers life in a pestilence.

Nothing is more carefully guarded by our institutions than the personal equality of all men in the right of life, liberty and property. This is the office of government; and where it is well discharged, its duties are all done. Outside of the domestic relations, and after the period of infancy, no one man can be compelled, without his consent, to serve another, or part with his property, or liberty, or life, for his benefit.

Not only are men thus equal as to these rights towards each other, but they are all equal as between themselves and the government. The State cannot take the property of one class without compensation, while it is held to compensate another. The property of *no man* can be taken without compensation—*no man* shall be deprived of his liberty—*no man* of life, unless it be adjudged against him by the courts on laws previously made; in other words, by due process of law. Now, these rights of life, liberty and property, though named as three, are in some sense actually only one—the right of life. To this the others are simply incidental. It is only for *live men* that laws are made, courts established, justice administered, and govern-

ment maintained ; even a prosecution for libel on the dead can be maintained only by averring and proving malice to the living. The State itself is nothing but the live men that compose it. In truth, civil society is nothing but the union of all for the protection of the lives of all and the subsidiary rights that belong to life.

As, therefore, each man has for himself an equal right to life, he has an equal claim on the State for the protection of that right. It is true that when the life of a man becomes dangerous, the State may by due process of law cut him off, as one may cut off a gangrened limb. But every man who is not dangerous, every man who has violated no law which denounces death as the penalty of its infraction, has not only the right to live, but a right to the help of all to be *let* live. The life of such a man cannot be taken to save the life of any other man, of any two men, or of any number of other men. It cannot be taken at all. Not only has each such man the right to live, but since the State is a union of the whole for the benefit of the whole, every man has an interest and right in the life of every other man that he shall continue to live. And though the self-murderer may escape human punishment, yet those who assist him in violation of the rights which the State had in him are guilty of a high felony. (2 R. S., 750, § 7.) And even on a trial for a capital offence, the prisoner cannot, by his own voluntary act, in the most solemn form, waive the right of the State that he shall not be deprived of life without due course of law, which in this case means, among other things, a trial by twelve instead of a less number of jurors. (*Cancemi v. The People, Court of Appeals*, October, 1858.) Thus, by the highest adjudication, it is established that the constitutional inhibition against taking life without due process of law is not only a bulwark for the individual against all other men, against the Legislature and against the State, but also a bulwark of the State, not merely against the Legislature and all other men, but against the individual himself.

Nor does the Constitution, when it forbids life to be taken without due process of laws, add "except *incidentally*." For that would make void the prohibition, because life *cannot be destroyed* except as the incident of some other act, to which

death is an incident. Hanging, shooting, immersion in water, or carbonic acid, are not death, but death is an incident to such acts, separable or inseparable as they shall be conducted. Death is but incidental to the stoppage of food, or drink, or air. If continued long enough, death ensues. Death is incidental to a thousand other things. And the constitution prohibits none of these things, but it prohibits the doing them in such a manner that, *according to the known nature of each*, death will ensue. It prohibits the end, and every means to that end except one—due process of law. The prohibition covers everything else.

Nor does the constitution say, “except in cases of *necessity*,” for who is to judge of the existence or measure of the necessity? If the Legislature, if individuals, if the State itself may kill whenever it is thought necessary, then killing is a matter of mere discretion. But, on the contrary, while that man who has wilfully done an act which the law has said the man who did should die, may, after indictment in the county, trial by twelve of his peers, after being confronted with the witnesses against him, defended by counsel, a verdict of guilty, and a sentence of the Court, be killed in the way which the law shall have previously ordered, and in no other way, every other man has a right to live. Every other man bears that within him which all men, the Legislature, even the State itself, is bound to stand back before and respect. Nay, when life is in danger he has a right to protection; and if the State will not, or the danger be so imminent that it cannot give it, then he may protect himself by whatever weapon he can. In such an emergency all words bearing the form of laws are to him void, property may be destroyed, and even other life, as dear to the possessor and as sacred to the State as his own, may be shed.. (2 Kent. Com., 13, 16; 2 R. S., 660, § 3, sub. 2; Const., Art. 1.; *Wynchamer vs. The People*, 3 Ker., 378; *Russell vs. The Mayor, &c., of New York*, 2 Denio, 461; *Mayor, &c., vs. Lord*, 17 Wend., 285; *The Same vs. Stone*, 20 Wend., 139; 25 Wend., 157, S. C.; *The People vs. Corporation of Albany*, 11 Wend., 539; *Van Wormer vs. The Mayor of Albany*, 15 Wend., 262; *Meeker vs. Van Rensselaer*, id., 397; *Brower vs. Mayor of New York*, 3 Barb. R., 254.) Such, under the constitution, is every man in the State, and among the rest those who reside along the shores

of the Narrows. And this great and imminent danger was at the time of these transactions over them. The pestilence, which under all the cases is a just occasion for destroying the property that endangers life, was among them. There was no uncertainty as to its origin. It came from the Quarantine establishment, for the yellow fever infection was both in the vessels and in the hospitals. Some had died, some were sick. In the two last years of its presence, as has already been stated, over four hundred of the inhabitants had sickened and nearly two hundred had died of the same disease, communicated from the same source.

Now, conceding the whole action of the Castleton Board of Health to have been void, and that all necessary precautions had been taken by the Quarantine authorities to isolate the disease, and that in spite of such precautions the disease had broken out and was impending, the question still remains, were the people of Castleton without all means of self-protection? If it be said that they might abandon their homes, the answer is that so might the people of Albany have abandoned *their* homes before destroying the tenement houses. (15 Wend., 397.)

But as that was not held necessary to them, neither can it be deemed necessary to the people of Castleton. They had the right of self-protection—a right under the constitution. For when that forbids the taking of life without due process of law, it authorizes, by an irresistible implication, the right to resist such taking, and to carry the resistance to any extent necessary to the end. This right, then, they might use; for what the constitution protects, the Legislature cannot destroy. Now, all the cases recognise the right of those whose lives are endangered by infectious diseases to destroy the place from which there was danger that the infection might spread. There was in fact no proof, and there could be none, that cholera *had issued* from the buildings destroyed in the Albany case. The proof was, that they were *dangerous* and *might* kill; and in such cases it is unnecessary to await until somebody has died before acting. The object of acting is to prevent the dying. Now, the proof has shown that infection was actually within, and might at any moment issue, and so far as such a thing can be known had, in fact, in at least one terrible instance, issued from the grounds.

At all events, the disease had always before, and had now, issued from the grounds, or the vessels, and nobody could say that it had not issued from the grounds. It certainly was from one or the other, probably was from both.

These hospitals were no more under the protection of law than those buildings in Albany, or than any other, for the law protects all buildings alike. Neither the hospitals nor the buildings in Albany were destroyed because they contained things illegal, for the uncleanness of the one was as lawfully there as the *malaria* in the other, but because the contents are dangerous to the surrounding people. Both were destroyed, not for what they contained, but for what they might suffer to escape; and for that alone, both in the exercise of the same constitutional right of self protection under equally impending danger.

The only possible difference in principle between the cases in this respect is, that the infection is accumulated on the anchorage and in the hospital, not by permission of the common law, but under the commands of some statute, and that but for those commands it would not be there; the sickness and death in that vicinity would not have occurred; life and health there would not be endangered. It is, therefore, on this hypothesis, the statute, if there be any such statute, which causes it all; and without the statute nothing of the kind would happen. These deaths were not accidental, as men may be run over by cars on a railroad, or fall from shipboard in a storm. They were inevitable: they could be prevented by no safeguards. The *malaria* poisons the *air*, and all who breathe it must be in danger; and although all may not die, no man can be said to be safe. If the vessels were to discharge broadsides of grape shot on the adjacent shores, life would not be more certainly taken than it is by their shiploads of infected matter; and the statute which should command the one would not more certainly, more directly, or more inevitably take life, than the one which commands the other. In fact, not so much so; for ramparts might be a safeguard against the cannon, but no ramparts can be raised against a tainted atmosphere. The life taken in either case would not be taken "by due process of law," and in either case the statute would be void. At all

events, it cannot deprive those whose lives are endangered of the constitutional right of self-defence by whatever weapon might, in the emergency, come to hand. If it be said that infected vessels *must* be somewhere, and may as well be on the present anchorage ground as elsewhere, and the hospitals as well be in their present location as anywhere, then, though the necessity were to be conceded, it does not follow that what the Constitution forbids should be done, and what the Constitution authorizes should be omitted. The State, by its powers of *eminent domain*, can take, on due compensation, land enough to remove all population beyond the reach of infection. This is the only way. For the right of self-protection against danger impending over life, can be taken away only by removing all occasion for its use—and for this the power of the State is limited only by its wealth, which happily is, for the purpose, ample. If need be, it may take all Staten Island, on due compensation, and remove all the inhabitants. But, it cannot, by taking a few acres only and by condensing there the plagues of half a world, deprive the surrounding populations of pure air and make it their *duty* to lie down and die without resistance.

But the nature of the statutes relative to Quarantine will be better understood when it is considered that they are the statutes relative “to public health in the *city of New York*,” and it is to save the people of the county of New York that those of the county of Richmond are exposed to die. A statute transferring to one the property of another is void. (*Taylor vs. Ford*, 4 Hill, 140; 1 Blk. Com., 139; *Embury vs. Connor*, 3 Com., 511; *Powers vs. Bergen*, 2 Seld., 358; *Westervelt vs. Gregg*, 2 Ker., 202.) “If,” says Bronson, J., in the first case, “the Legislature can take the property of A and transfer it to B, they can take A himself, and either shut him up in prison, *or put him to death* ;” and because the latter could not be done, the former was denied.

Undoubtedly the city of New York is entitled to all the protection in the matter that the State can give consistently with the health of others; she has no right to more. Her great advantages are attended by correspondent inconveniences; her great public works by great expenditures; her great foreign

commerce by the infection it brings. But the Legislature can no more apportion upon the surrounding communities her dangers than her expenses ; no more compel them to do her dying than to pay her taxes ; neither can be done.

Nothing in *Harris vs. Thompson*, 9 Barb., 350, militates against these views. The subject of the constitutional inhibition against taking life but by due process of law, does not seem to have been alluded to ; and surely a case, whatever it may decide, can be no authority on a question not mentioned by counsel or considered by the Court. It is undoubtedly true that "nothing which the law sanctions can be a nuisance." But where the Legislature authorizes or commands that which the Constitution forbids, its statutes are not *law*, and sanction nothing.

For all these reasons, I think the prisoners should be discharged.

The following articles upon the subject of the burning of the Quarantine buildings, written by W. FARLEY GRAY, Esq., which appeared at the time in the *Evening Post*, cannot fail to interest the members of the legal profession.

THE LEGAL QUESTION.

WAS NOT THE QUARANTINE A NUISANCE, AND HAD NOT THE PEOPLE A RIGHT TO ABATE IT?

To the Editors of the Evening Post :

I have had occasion to look into the legal rights and liabilities of the people of Richmond county, arising out of the late Quarantine invasion, and I am satisfied that the public entirely misapprehends both the legal and the moral issues involved by the summary destruction of the public buildings at Tompkinsville. Much as I deplore a resort to violence at any time, and especially against the constituted authorities, I am forced to the conviction that the public press and the municipal authorities of New York have alike failed to appreciate the strength of the legal authority under which the "incendiaries" acted when they marched upon the Quarantine establishment.

A careful examination of the books of Common Law, and of the reported decisions of our highest State tribunal, leave no doubt whatever as to the principle that any individual has a right, of his own volition, to abate a nuisance, it being always understood, however, as Chief Justice Nelson says in *Wetmore agt. Tracy* (14 Wendell, p. 254), that he does it under the penalty of being considered a trespasser, if it should turn out that it was not a nuisance. This principle has been affirmed again and again in various decisions by the highest courts known to the laws of our State, but in no one more remarkable than the the fifteenth volume of Wendell's Reports, 397. This was a celebrated case of *Meeker agt. Van Rensselaer*, reported in case where the defendant caused five tenement houses in the city of Albany to be pulled down, which were inhabited by a large number of Irish emigrants during the prevalence of Asiatic

cholera in 1832, and which, in consequence of their crowded state and filthy condition, had become offensive and dangerous to the lives and safety of the neighborhood. The owner of the property brought an action to recover damages of the party who caused the houses to be torn down. The party thus sued contended, in his defence, that the buildings had become a public nuisance; that the Board of Health had declared them to be such, and that he had a right to remove them. The Court, in its decision, declared that no more offensive nuisance could be imagined than the buildings constituted; that the defendant did not require the authority of a Board of Health to pull them down, but that simply as a citizen of the ward in which they were situated, desirous of preserving the public health, he was fully justified in every act which he had committed. This principle, or, in other words, this right of a private citizen to abate a public nuisance, thus broadly and without qualification laid down by the Supreme Court of this State, is but the confirmation of the old common law doctrine on this head, and has been again and again affirmed before in the cases of *Wetmore agt. Tracy* (14 Wendell, 250); *Hart agt. The Mayor of Albany* (9 Wendell, 610); *Van Wormer agt. The Mayor of Albany* (15 Wendell, 262); *The People agt. Corporation of Albany* (11 Wendell, 539); *The People agt. Lamb* (1 John. Rep., 783); and since, in the cases of *Renwick agt. Morris* (3 Hill, 624,) and *Tanner agt. The Trustees of the Village of Albion* (5 Hill, 121.)

The principle thus rendered unquestionable, it is only necessary, it would seem, as before remarked, to establish the fact that the Quarantine hospitals, as actually managed, had been conducted in such a way as to become dangerous to the lives and property of the inhabitants around them; or, in other words, to have become a nuisance within the acknowledged common law definition of a public nuisance, recognised and incorporated into the jurisprudence of this State, to constitute a complete and perfect justification for their destruction on the night of the first of September. Next comes up for consideration the remaining question, how far the resolution of the Board of Health before alluded to, passed on the morning of the 1st of September, declaring the hospitals a nuisance, and calling upon the

people to abate them, constituted a justification of the act which followed. Startling as such a conclusion would be, in view of the universal denunciation of the proceedings, as the grossest outrage upon law and public order, there would seem to be but little room for doubt upon the subject, if we are to recognise the decisions of our State courts as authority upon the subject. The Board of Health, not only of our large cities but of our small towns and country villages, has, it would seem, (Rev. Stat., vol. 1, p. 581), the most extraordinary powers in the suppression and removal of nuisances—powers altogether supreme and plenary, from the exercise of which no appeal lies. They constitute, it would seem, a judicial tribunal, whose decisions, within the scope of their jurisdiction, are absolutely final and irrepealable. It would appear that they have the right, in the exercise of their powers, as conservators and guardians of the public health, to declare a thing to be a public nuisance, and to require it to be abated, and that no appeal can be taken from their decision. And further, they have the power to call the whole civil power of the county in requisition to enforce their ordinances. (1 vol. R. S. sec. 27, title VI., p. 444.) The most remarkable case, perhaps, in which powers thus absolute were adjudged to belong to the Board of Health, is the case of *Van Wormer agt. The Mayor, Aldermen and Commonalty of the City of Albany*, 15 Wendell, 262. This was an action brought by the plaintiff against the Corporation of Albany to recover damages for the pulling down of a barn and sheds, adjudged by the Board of Health of that city to be a nuisance, and torn down by an agent of the Corporation by virtue of an ordinance of the Common Council, passed in conformity with the instructions of the Board of Health. The important question, says Chief Justice Savage, in the judgment of the court, is whether the Board of Health has power to authorize the acts of which the plaintiff complains. "The Board of Health," said he, "by the Revised Statutes (1 R. S., 440) is invested with large powers for cleaning and purifying the city, and it is made their duty to exercise certain powers specified, and also such other powers, whenever a contagious disease shall appear, as in their judgment the circumstances of the case and the public health shall require." By the act of 1832, p. 581-2, the Board

of Health have power, and it is made their duty, among other things, "to establish regulations, *in their discretion*, concerning the suppression and removal of nuisances, and all such other regulations as they shall think necessary and proper for the preservation of public health." "When the acts complained of were done, these several acts of the Legislature (the Judge goes on to say) were all in force; and it must be conceded that they confer upon the Board of Health very large discretionary powers, among other things, concerning the suppression and removal of nuisances." "It is right," he continues, "that such power shall exist somewhere, to be exercised upon a proper emergency. If the civil authorities were obliged to await the slow progress of a public prosecution, the evil arising from the nuisances would seldom be avoided. It cannot be doubted, I think, that the statute gives a summary remedy to remove or abate nuisance. The evidence offered to show that there was in fact no nuisance was properly rejected. *That point had been adjudicated by the proper tribunal* (the Board of Health,) and was not in issue at the Circuit." From this decision it would seem that the decision of a Board of Health upon a matter of a public nuisance is conclusive, and cannot in any way be appealed from, controverted, or contested. *It is absolutely final, and for its execution the whole civil force of the country can be called into requisition.* (Vol. 1, R. S., p. 445, sec. 27, title 6.) The existence of such a tribunal, *qua-si* judicial (vide language of the Court in the case of *Meeker against Van Rensselaer*, 15 Wen., 399, before quoted) invested with its responsible, supreme, discretionary authority in all matters pertaining to the public health, would seem to be an anomaly in the otherwise carefully checked and balanced powers of our State. But whether it be so or not, there it is; and a very striking and momentous question now presents itself, whether, with such powers possessed by the Board of Health of Castleton, in common with the other towns and villages of the state, (vid. sec. 27, title 6, R. S.,) their resolution passed on the 1st day of September, declaring the hospitals at Quarantine a public nuisance, and calling upon the citizens of the county to suppress it, does not render the proceedings of the parties who burned the hospitals altogether legal and regular, and furnish, consequently, a complete legal justification of the

act. The expression of the writer's opinion either way would be entitled to, and very justly receive, but little weight. He is, therefore, quite content to leave every person uninfluenced, to form his own opinion from the facts and the law.

To revert once more, in conclusion, to the main point upon which, in the event of the resolution of the Board of Health not being deemed sufficient authority for the act, the whole question will turn, viz. : whether the hospitals at the time of their destruction constituted a public nuisance, dangerous and destructive of the lives and safety of the neighboring inhabitants. The writer is not desirous of entering at all into the discussion of the facts connected with this part of the controversy, only remarking, before passing to the consideration of the principles of law applicable to the subject, that it seems to be conceded that constant communication took place between persons outside of Quarantine and others residing in the village, and that the case of Kramer and others originated in consequence of infected clothing, bedding and other articles of furniture being permitted to be brought ashore and held by persons outside of the walls. A public nuisance is defined by Blackstone and Hawkins "to be any offence against the public, either by doing a thing which tends to the annoyance of the king's subjects, or by neglecting to do a thing which the common good requires." (1 Haw., 360 ; 4 B. C., 166.) Another author (Jacobs' Law Dic.) remarks that a nuisance is an annoyance ; anything that worketh hurt, inconvenience or damage. It is a common nuisance, indictable at common law, to divide a house in a town for poor people to inhabit in, by reason whereof it will be more dangerous in the time of sickness and infection of the plague. (Rolles' Abr., 139.) So manufactures, lawful in themselves, may become nuisances if erected in parts of towns where they cannot but greatly incommode the inhabitants and destroy their health. In the case of *The People agt. The Corporation of Albany* (11 Wendell, 539), the Supreme Court of this State decided that a corporation could be indicted for neglecting to excavate, deepen and cleanse a basin in the North River, at the termination of the Erie Canal, which had become foul, filled and choked up with mud, rubbish and dead carcasses of animals, whereby the water became offensive and noxious, and

infected the air, to the damage and nuisance of the citizens residing in the vicinity. Keeping gunpowder in such a way as to be dangerous to the inhabitants or passengers, has been decided by the Supreme Court of this State as a nuisance, and indictable as such. (The People *agt.* Sands, 1 John. R.)

Thus broad and comprehensive is the language of the common law and our courts upon the subject of public nuisances; and, however much we may doubt the wisdom of carrying the doctrine so far, fraught as it is in its application with extreme danger of abuse, and consequent violation of the rights of the citizen, still, until repealed, it must be the standard by which we are to shape our own actions, and decide upon and determine the character of those of others.

* * * * * *

LEX.

New York, September 16, 1858.

THE QUARANTINE CONTROVERSY.

WAS THE HOSPITAL NUISANCE REALLY ABATED?

To the Editors of the Evening Post:

In the communication which I addressed to you some time since, upon the subject of the principles of law involved in the destruction of the Quarantine Hospitals at Staten Island, I endeavored to show that the judgment of a Board of Health in this State, upon the subject of a public nuisance, was final and conclusive; not liable in any way to be reviewed, contested or resisted, and that it constituted a complete legal justification for all who acted under its authority, or by virtue of its instructions. No attempt has been made, that I am aware of, to controvert this doctrine, but it is insisted that it has no application to nuisances created or maintained under the authority of the State, or, in other words, that State hospitals cannot be abated by any action on the part of a local Board of Health or of the people themselves, although through the bad management of commissioners, to whom their entire control has been entrusted, they should become public nuisances, destructive of private

property and public safety, and therefore subversive of the very purpose for which they were instituted; that the respect due to the sovereign power of the legislature, and the immunity enjoyed by its acts, require that they should remain inviolate and unrestrained in their work of evil, although continually violating the law of their creation, and outraging the two principles for which all government is instituted—the protection of life and property, until it shall please the power to which they owe their origin, to pass a law for their removal elsewhere. It is not, perhaps, necessary to discuss the propriety of such a principle of law in relation to the public hospitals at Staten Island, inasmuch as in the original act creating them and establishing the Quarantine, and in many of the subsequent acts upon the same subject, there is found a provision “that nothing contained in the respective acts shall be construed to interfere with the remedies against nuisances provided by the common law.” (See Session Laws of 1799, and 1st vol. Revised Statutes, chap. XIV., title V., sec. 6.) The express waiver of any supposed exemption of the hospitals from responsibility to the common law principles of nuisances, by virtue of their public character, is, of course, conclusive as to the matter; but if it were not, it would not be difficult, we think, to show that there is no such principle of law as the one contended for. If there is, so entirely repugnant is it to every principle of right and justice, so opposed to all our notions of a just constitutional government, so entirely at war with the whole genius, spirit and theory of our institutions, that it can never be admitted unless imperatively required by some express declaration of the Constitution, or unless it results as the necessary consequence of some power involved in and essential to the exercise of that portion of the sovereign power of the state delegated to the Legislature by the people.

It is hardly necessary to say that there is no provision of the Constitution upon the subject. Is such immunity, then, the necessary result of the exercise of any attribute of sovereignty, or of any power given to the Legislature by the Constitution? We think not. No one will contend that the power to establish hospitals for the preservation of the public health, brings with it necessarily the power to protect such hospitals, although

by bad management, or otherwise, they become destructive of the very purpose for which they were established, and have become nuisances, radiating disease and death among those whom they were designed to protect from such calamities. The State, on this subject, has no greater power than the individual. They both have the right, under the law, to construct hospitals for the reception of the sick, but they are bound through regard to the "public safety, which is the paramount law of the land,"* one quite as much as the other, to manage them in such a way as that they shall answer the end for which they are instituted, and not become public nuisances, destructive of the lives and property of the citizens. As long as they are so managed they are entitled to and will receive the protection of the law; but when, through bad management, corrupt practices, or any other cause whatever, they become violators of the law, by becoming that which the law abhors, and which is incompatible with public safety, viz., a public nuisance, they put themselves without the pale of law, and consequently its protection, and become liable, like all other nuisances, to its penalties. The truth is, the obligation which the law imposes upon all proprietors of real estate, "so to use their property as not to injure that of others," applies with the same force to State authorities, when they become the owners of such real estate, as they do to individuals and corporations. It was declared by the Supreme Court, in the case of *Brewer agt. The Mayor of New York*,† that a corporation, although deriving its power from an act of the Legislature, and *irresponsible as a law-giver*, cannot legally erect or maintain a nuisance any more than a private citizen.

This is a very important case; and the reasoning of the Court, if not the decision, would seem to cover the whole ground involved in the discussion of the question we are now considering. It was a case where the Commissioners of Emigration, by virtue of an act of the Legislature, passed on the 7th April, 1848, had leased, or were about to lease, from the corporation of New York, certain docks, at a place called the

* C. J. Hand, page

† 3 Hill Rep., 256.

North Battery, on the North river, for the purpose of making an emigrant depot. The citizens in the neighborhood, apprehensive that the occupation of the land for such a purpose would lead to the introduction of disease among the inhabitants of the neighborhood, and the abandonment and depreciation of property, applied to the Court to restrain the corporation from leasing, and the Commissioners from occupying, the ground for any such purpose. An injunction was issued accordingly, and afterwards sustained upon the various grounds that a corporation, although created by legislative authority, enjoys no privileges in the ownership of real estate which the private citizen does not ; and although irresponsible when it declares a duty, prohibits an act, or enforces an obligation, because acting in a governmental capacity, it enjoys no peculiar privilege as an owner of real estate, and therefore cannot erect or maintain a nuisance upon it ; and that the Commissioners of Emigration, although authorized by the Legislature in their discretion to select any dock or docks in New York which they may think suitable for emigrant purposes, cannot locate it where it will be a nuisance. That in respect to the possession of docks and the landing of emigrant passengers, they were exercising a purely private function ; that the keeping of accommodation for emigrant passengers, although a public matter, was no more a governmental act than their transportation across the Atlantic ; and that if the hand of government is to be seen in the occupation and employment of a dock by Commissioners of Emigration for such a purpose, it is that of a government engaged in the ordinary transactions of the citizen, owning land and devoting it to the common purpose of business, and its agents are to be held responsible according to the grade of the function which they execute, rather than irresponsible on account of the supremacy of their principle. In accordance with the principles here laid down, is the language of the Supreme Court of the United States in *Planters' Bank of Georgia*, 9 Wheaton's Rep., 904.

“ If a State embark in the business of a trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character and takes that of a private citizen.” The just and necessary inference from this case is,

when the State is engaged in the exercise of a purely governmental function, as when it is either declaring the law in a legislative capacity or in a ministerial one, executing it through the executive, it is wholly irresponsible; but when through its agents, whether Commissioners of Emigration or not, it is occupying lands and buildings either for accommodation of emigrant passengers or quarantine passengers, it is exercising a purely private function, and is bound so to use them as not to injure the rights of others.

This is unquestionably the true distinction. There is a limit to the power of State Legislatures, as there is to the power of our National Legislature, founded both in natural equity and natural justice, as in the constitutions out of which they respectively sprung into existence. Even in Great Britain, where the legislative power is supreme, the doctrine has been boldly held for years, that a law opposed to natural equity is void. (Day & Savage, Hob. 8, Bonham's case, 8 Cow., 234, 1 vol. 41, note 3. Meoler, Bishop of Winchester, Hob. 224.) This is but a recognition by human tribunals of that sublime truth that the law of God is paramount to all human law, for the law of natural equity and natural justice is the law of God. If this abstract principle can operate as a practical check upon the otherwise omnipotent power of the British Parliament, how much more potently must it control the action of our legislative bodies. In Great Britain they have no written constitution, creating and controlling the power of Parliament, and, consequently, the law of Parliament becomes the *suprema lex*, or the supreme law of the kingdom, as it is itself the supreme power.

Hence the acknowledged power of Parliament to declare what does not constitute a nuisance. (1 Bla., 162.) The case is entirely different with the Municipal Legislatures of the different States, as well as the great National Legislature of the United States. In New York, as elsewhere, we have a written and exact constitution, whose creation the Legislature is, deriving all its power from it, getting none from any other source, and possessing none which it does not clearly, or by necessary implication, delegate. It is emphatically a corporate body, with well-defined and limited authority, and all the power which goes to constitute sovereignty, if not expressly given to the

Legislature by the Constitution, remains with the people, with whom here rests the *juræ summi imperii*.

These principles are expressly declared by the Supreme Court in the case of *Harris agt. Thompson*, reported in 9 Barbour Reports. If they are admitted, it follows necessarily that no power can be exercised by the Legislature which is not clearly given, or necessarily implied in some other power that is clearly given. In many instances the legislative power is expressly controlled by certain provisions of the Constitution, providing among other things, that no person shall be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public purposes without compensation. These various limitations and principles, it will be readily perceived, are manifestly wholly irreconcilable with the existence of the alleged right on the part of the Legislature legally to erect or maintain a nuisance destructive of life and property. First, because the exercise of such a power would be subversive of the end and object of all government, which in the impressive language of the Supreme Court of the United States, in the case of *The Charles River Bridge agt. The Warren Bridge*, 11 Peter Rep., "is to promote the prosperity and happiness of the people by whom it is established." Secondly, because it would be opposed to natural equity and justice; and, thirdly, because the exercise of such a power is not necessary to accomplish any proper end or object of government. Such a power, it is confidently asserted, has never been claimed for the government in any decision of the courts of this State. Even the Court in the case of *Harris agt. Thompson*, before alluded to, and so much relied upon for this principle, although disposed to carry the doctrine of State rights as far as its most ardent advocates and admirers could desire, shrunk from the enunciation of any such monstrous principle as this. "As an abstract question," says Justice Hand in this case, "it would be painful to suppose that the State, except in cases of immediate and painful necessity, could lawfully erect and maintain nuisances known to be destructive of the health and lives of its citizens."

Notwithstanding this express disclaimer on the part of the Court of any intention to decide that the Legislature had any such power, and its explicit statement that the decision of the

Court below did not involve this principle, and therefore could be affirmed without affirming such a one, yet this case is relied upon and quoted as establishing the doctrine. If upon this point we can take the evidence of the Court's own language, it is clear that it did not decide the point at all, and if so, then the question is still open, as far as this decision goes, to be disposed of upon the principles of law applicable to it. We cannot help remarking, however, before passing from the consideration of this case, that the conclusions of the Court, such as they are, in some parts of its opinion, are inconsistent with its reasonings and admissions in other places, and cannot be maintained except upon the denial of two principles, one of which it does not even controvert, and that is, that a law opposed to natural equity is void; and the other of which it expressly admits and declares, and that is, "that the Constitution has fixed limits to the exercise of legislative authority. But within these limits, unless, perhaps, when it violates natural equity, legislation is without control.*"

These reservations we respectfully but firmly suggest, are wholly irreconcilable with the conclusion reached by the Court in its opinion, and are therefore inconsistent with its judgment, even as circumscribed by its own language.

The Court in this case assumes, if it does not expressly declare, that our Legislature possesses the same absolute and supreme power to declare what shall and what shall not be a nuisance, which belongs confessedly to the British parliament, and which is a power clearly regal and belonging to the British parliament by virtue of its peculiar power and jurisdiction, which, says Sir Edward Coke, is so transcendent and absolute that it cannot be confined either for causes or persons within any bound,* and yet in the next paragraph the Court, as before remarked, says that the power of the Legislature is limited by the Constitution.

It is difficult to appreciate the force of the reasoning and conclusions of the Court in this case. It is unquestionable, says the Judge, that the dam could not become a nuisance as long

* Coke's Institute, p. 36.

as it was maintained by public authority ; and in another place he remarks, that it is a legal solecism to “suppose that that is a public nuisance which is held by public authority.” If by this the Court mean to state as a fact, that a dam, or a hospital, or a building for keeping gunpowder, owned by the State, cannot become a nuisance, we of course know, as in the case of the Hospital on Staten Island, that it is not true. But if it means that they cannot become so, in such a way as technically to warrant the finding of an indictment in the name of the people against them, we may very safely admit it without acknowledging that it is not in fact a nuisance, and without taking away the right of the people to abate it. But if he means that being by public authority, there is no remedy except an appeal to the Legislature, either in our laws or constitution, then we must be prepared to admit that our legislature has supreme power like that of the parliament of Great Britain, and that the life and property and vested rights and privileges of the citizen are completely at its mercy. If *Courts cannot indict or enjoin*, if individuals cannot sue, if Boards of Health cannot reach and prosecute, and individuals cannot abate, because upheld by public authority, what remedy is there? Does it not follow that the power must be wholly irresponsible, without limit or qualification, either by constitution or otherwise, where acts are thus beyond the reach of law or redress in any possible shape. And yet, the Judge, as before remarked, in another part of his opinion, tells us that this is not so, that the Constitution has fixed limits to the power of the legislature ; that even the State and General Government together do not possess all the power which goes to constitute power ; that there are various dormant rights and powers which remain with the people, with whom here rest the *jura summi imperii*, or, in other words, the supreme sovereignty? Why, where it may be asked, would the doctrine lead us to if it were sound? Suppose the legislature, as in an act passed in 1848 or 1849, should authorize the Commissioners of Emigration to establish a smallpox or yellow fever hospital at the junction of Broadway and Chambers street, or suppose it should pass an act giving certain persons the right of warehousing gunpowder anywhere in New York, in buildings which were not fire-proof, and the same corrupt

influences which induced the legislature to pass such acts should be sufficient to prevent their repeal, will any one contend that there is no remedy by injunction to prevent their erection, or by abatement to destroy them after they were up. Yet such would be the legitimate and necessary result of the reasonings and principles of the Court in same parts of its opinion in *Harris agt. Thompson*.

In the only other case that I can find in which this doctrine has been directly considered, that of *The People agt. Corporation of Albany*, 11 Wendell, a contrary doctrine is very clearly intimated; but as we shall have occasion in another connection to allude more fully to this case, we will not dwell further upon it at present. Enough has been said, we think, to justify the conclusion that the legislature has not, and cannot have, in a form of government like ours, the power lawfully to erect and maintain a public nuisance, destructive of public health and private property. This admitted, the next question that presents itself is, What is the remedy where such a nuisance exists under public authority?

In the consideration of this branch of the case, we will begin by remarking that the acts of our Legislature within the scope of their power are, of course, supreme and binding upon the citizen; but that out of these limits they have no obligatory force whatever, and are entitled to no greater respect than the unauthorized acts of any other corporate body, and can be, and are, every day, disregarded with impunity. This is the only means frequently left the citizen to test the constitutionality of a law of the Legislature; for, having no power to sue the State, the matter can in no way get before the courts unless he violates the law, and the State appears as the prosecutor for its infraction. This is just the position in which no doubt the people of Staten Island found themselves in relation to the public hospitals at Quarantine. They could not sue the State for the damages which had resulted for years from their existence among them, nor could they indict the State for keeping up a nuisance, according to the doctrine in *Harris agt. Thompson*, it being, said the Court in that case, "an absurdity for a prosecution to be instituted by the people for doing what the people has enacted." The remedy of petition, to which it is said they should

have had recourse, had been exhausted, with no practical result, after years of patient acquiescence in all the evils of the nuisance, than the passage of two legislative acts for their removal, to be defeated and rendered nugatory by a combination among parties interested in their preservation. What, then, remained save the painful alternative of exercising the great right of self-preservation, and abating the nuisance in the only way that law and immemorial usage have sanctioned, or a continued submission for an indefinite length of time—perhaps forever—to the disastrous results realized every year by its continuation in the destruction of life and property. Now that time has been had for deliberation, will any contend that there is anything in the respect due the supreme power of the State, in the obligations of the citizens to their government, in the principles of law, or in national justice or equity, which made the latter course obligatory upon the inhabitants of Staten Island? It was, in fact and truth, the only means left to relieve themselves of the intolerable oppression; and to say that they were not legally justified, is, in view of the facts, to say what no lawyer or even citizen will be willing to admit that there can exist a wrong, and a most grievous wrong, striking at the dearest rights and the most cherished principles of the citizen for which there is no remedy under our laws or constitution. The remedy, it will be readily admitted, is an extreme one; but apart from the circumstances attending its exercise in the present case, and the magnitude and value of the property destroyed, and the fact of their being hospitals, is there anything to distinguish it from the ordinary exercise of the right to abate a nuisance, that “extra judicial or eccentric remedy,” to use the language of Blackstone, “which the law allows for the redress of injuries which require a more speedy remedy than can be had in the ordinary forms of justice.” (Blackstone, vol. 3, p. 2.) The extra judicial remedies, of which there are five enumerated by this writer, prominent among which are the right of self-defence and the right of abating of nuisances, are nothing more than the recognition by law of certain natural and inalienable rights of man to the enjoyment of life and property, which come not from society, and “cannot be taken away by society.” (Blackstone, vol. 3, p. 3.) One of these rights or remedies, thus acknow-

ledged to be independent of courts, and given as a remedy supplemental to the ordinary judicial remedies of the State, for the redress of injuries which cannot wait the slow progress of the forms of justice, is the one which the people of Staten Island claim to have exercised on the night of the first of September. In doing so, have they been guilty of the violation of any law? We think not. We are free to confess that the power to burn down a public hospital, upon the ground that the Board of Health of the neighborhood have adjudged it to be a nuisance, is a very dangerous power, which, in practice, may lead to the most deplorable results; but we must add that this does not furnish any argument against the existence of the power, nor can any such possible abuse militate partly against its expediency. That no argument can be drawn from such considerations against its existence, is rendered clear by the case of *Van Wormer agt. The City of Albany*, (14 Wendell,) where a power equally dangerous and equally liable to abuse—that of pulling down private property, by an individual of his own mere volition, upon the ground that they constituted a public nuisance—was clearly and equivocally admitted by the court, and defended upon the ground of public expediency, and the necessity of having such a power lodged somewhere, to be exercised upon a public emergency. Nor can any argument be fairly drawn from its possible abuse against it expediency.

There is no great power, such as that given to Boards of Health by the law, or that of the corporation of a city, to pull down private houses which stand in the path of an advancing conflagration, or the power of a captain of a ship during a storm, to throw overboard private property to save his ship, or the right to isolate the leper, or even the right of self-defence, which is not liable to great abuse; but no one ever yet contended that it was expedient to take away such powers because of their possible abuse.

These various rights or powers, like the one exercised in the destruction of the Quarantine Hospitals, all have their origin in the “great law of necessity, which,” in the language of the Court in the case of *The People agt. Corporation of Albany*, 11 Wend., 544, before alluded to, “supersedes all law, and is to be

sustained by the overruling principle of self-preservation." "We are not aware," remarks the Court in this case, that it (meaning the law or rule of necessity) is ever enforced by the authority of law through the medium of judicial tribunals or any other legally appointed body of men. The law of the land does not contemplate such an emergency, and therefore does not provide for it; if it had, it would no longer be the undefined law of necessity." Examining the facts of this case in connection with the action and language of the Court, it would seem that though they did not decide that a public work becoming a nuisance could be abated by a corporation or a citizen, it was rather because it was not necessary they should do so than because they doubted the existence of such a power. The facts of the case were briefly these: The corporation of the city of Albany were indicted for not removing a nuisance which existed in the basin in the Hudson river at the termination of the Erie canal. The defence, among other matters, was, that the nuisance was occasioned by a bulkhead at the foot of the basin, which had been erected by a joint stock company, under the authority of an act of the Legislature. The Court below decided that the safety and preservation of the public health was a paramount law, and that the corporation was bound to remove the bulkhead though constructed under the power of the Legislature, if it was necessary so to do to destroy the nuisance.

The Supreme Court, without denying the power and right of the corporation to cut down the bulkhead if they deemed it necessary to do so, in order to remove the nuisance, which they would clearly and necessarily have done if they had been of the opinion that it had no such power, went on virtually, and as we think necessarily, assuming the existence of such a power, to declare that they were not bound to exercise it from a supposed law of necessity for the preservation of the public health any farther than a private citizen was—that they were, in fact, bound to exercise no power which was not clearly delegated to them by their charter. Any other power belonging to them by reason of their duties as conservators of the public health and not expressly given by their charter, such as cutting down the bulkhead erected by the authority of the State, for the pur-

pose of destroying a nuisance, although an undoubted one, was yet one of such a character that they were at liberty to exercise or not, at their discretion. We take this to be the fair and necessary construction of the meaning and law of this case, and if so, it clearly and indisputably establishes the doctrine, that the people or the Board of Health have the right to abolish a nuisance, although existing, so to speak, under State authority.

To resume: in the particular case now before us, it would not be difficult to show that a comparison of evils, as between the destruction of State hospitals and their consequent removal elsewhere, and the loss of lives and the destruction of property by their remaining, would result in strongly fortifying the expediency of exercising such a power. Our Supreme Court, whose authority, to say the least of it, upon a question of this sort, is entitled to great consideration, base their decisions in the celebrated case in 14 Wendell, expressly upon the ground that the public safety requires that such a power should exist somewhere, to be exercised upon a proper emergency. But it is urged, that if such a power is conceded to belong to the Board of Health, there is not a State institution, including the State prisons at Sing Sing and Auburn, which may not be declared nuisances, and be abated by order of a Board of Health. But gentlemen forget that the Board of Health, and those who act under its authority, when they exercise the right here claimed to belong to them, of abating a public hospital as a nuisance, do it as the individual does who abates a nuisance of his own authority, under the responsibility, in the language of Chief Justice Nelson, in the case just cited, of being considered a trespasser if it turns out not to be a nuisance. Should the Board of Health of Westchester so far violate all the probabilities of the case, and so far outrage the public sense of justice and right and truth, as to declare the prison at Sing Sing a nuisance, and have it burnt down, they would be held guilty of the crime of arson, and suffer the penalty of such a crime. But all truth and all experience repudiate the probability of such a result, and there is certainly nothing in the history of the Quarantine difficulty to justify any such anticipation. Experience teaches us that it requires some very great exciting cause to rouse the minds of the great masses of people in this country to

any acts in open violation of law and public order ; and when such have taken place, however much we may have deplored the precedent, as tending to anarchy and subversion of government, we have been forced to confess that they were not without the excuse and extenuation which a desire to do justice and administer right must necessarily furnish. The truth is, that as the great conservative power upon which we are to depend for the perpetuity of our institutions comes from the sound sense and patriotism of the laboring classes of our country, we may safely leave them even greater discretionary authority than is implied in the power of boards of health or private individuals upon the subject of public nuisances, with the perfect confidence that if ever exercised in great emergencies like the recent one, that it will be exercised for the public benefit, and under a due sense of their responsibility to the State and their families.

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